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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0965; Product Identifier 2018–NM–124–AD; Amendment 39–19617; AD 2019–07–06]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–100–1A10 airplanes. This AD was prompted by a report that certain split ball bearings used in main landing gear (MLG) side brace actuator assemblies are manufactured from material that does not meet the required material properties. This AD requires an inspection of the left and right MLG side brace actuator assemblies and, if necessary, replacement of the split ball bearings. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 28, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 28, 2019.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com*; internet *http://www.bombardier.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0965.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0965; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aerospace Engineer, Mechanical Systems and Admin Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD–100–1A10 airplanes. The NPRM published in the **Federal Register** on November 29, 2018 (83 FR 61336). The NPRM was prompted by a report that certain split ball bearings used in MLG side brace actuator assemblies are manufactured from material that does not meet the required material properties. The NPRM proposed to require an inspection of the left and right MLG side brace actuator assemblies and, if necessary, replacement of the split ball bearings.

We are issuing this AD to address the non-conforming split ball bearings, which, if not corrected, could result in potentially asymmetric MLG extension or retraction and consequent collapse of the MLG during landing.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–20, dated July 27, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model BD–100–1A10 airplanes. The MCAI states:

> The landing gear supplier has informed Bombardier Aerospace about a quality escape involving Main Landing Gear (MLG) side brace actuators that have been assembled using non-conforming split ball bearings. The affected bearings are manufactured from material that does not meet the required material properties. If not corrected, this condition can result in potentially asymmetric MLG gear extension or retraction and subsequent gear collapse during landing.
>
> This [Canadian] AD mandates verification of the installed MLG side brace actuator assemblies and replacement of the affected parts.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0965.

Comments

We gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

One commenter, Andy Ingwersen, and Flexjet indicated support for the NPRM.

Request for Records Check To Determine MLG Side Brace Actuator Assembly Serial Number as an Alternative Method of Compliance

Flexjet requested that an additional means of verification be allowed for determining the serial number of the left and right MLG side brace actuator assembly part number 40310–103. Flexjet suggested that we add language to paragraph (g) of the proposed AD stating ''A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number can be conclusively determined from that review.'' Flexjet justified this request by pointing out that similar language is used in other ADs. Flexjet explained that 20 MLG side brace actuator assembly serial numbers are affected by Bombardier Service Bulletin 100–32–30, dated December 18, 2017, and 217 MLG side brace actuator

assembly serial numbers are affected by Bombardier Service Bulletin 350–32–006, dated December 18, 2017, and reasoned that a logbook review would save time and present less of a financial burden on operators.

We agree with the commenter for the reasons provided. We have determined that a review of maintenance records is acceptable for complying with the actions specified in paragraph (g) of this AD, provided the serial number can be conclusively determined from that review. We have revised paragraph (g) of this AD accordingly.

Request To Shorten Compliance Time

One commenter, Ty Smith, made a request to change the compliance time to verify the MLG side brace actuator assembly serial number and perform applicable on-condition actions, and we infer from the request that the commenter wishes the compliance time to be shortened. The commenter asserted that a compliance time of 48 months leaves a large window of opportunity for the unsafe condition to potentially lead to a malfunction. The commenter conceded that a certain amount of time is needed to address the unsafe condition, but presumed that operators have the means to address the unsafe condition sooner than the 48 month compliance time allows.

We agree to clarify. As noted in figure 1 to paragraphs (g) and (h) of this AD, the compliance time varies depending on the total number of flight cycles accumulated on an airplane, with 48 months being the longest possible compliance time. In consideration of the average utilization rate by the affected U.S. operators, the practical aspects of an orderly modification of the U.S. fleet during regular maintenance periods, and the availability of required modification parts, we have determined that the compliance times specified in figure 1 to paragraphs (g) and (h) of this AD are appropriate. We have not changed this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc., has issued Service Bulletin 100–32–30, dated December 18, 2017; and Service Bulletin 350–32–006, dated December 18, 2017. This service information describes procedures for inspecting the left and right MLG side brace actuator assemblies to verify the serial number and replace the split ball bearings. These documents are distinct since they apply to airplanes in different configurations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 468 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$39,780

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of the required inspection. We have no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
8 work-hours × $85 per hour = $680 per airplane	$1,820	$2,500

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all known costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to

the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–07–06 Bombardier, Inc.: Amendment 39–19617; Docket No. FAA–2018–0965; Product Identifier 2018–NM–124–AD.

(a) Effective Date

This AD is effective May 28, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, serial numbers 20003 through 20500 and 20501 through 20665 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by a report that certain split ball bearings used in main landing gear (MLG) side brace actuator assemblies are manufactured from material that does not meet the required material properties. We are issuing this AD to address these non-conforming split ball bearings, which, if not corrected, can result in potentially asymmetric MLG extension or retraction and consequent collapse of the MLG during landing.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection To Verify Serial Number

At the applicable time specified in figure 1 to paragraphs (g) and (h) of this AD: Perform an inspection to verify the serial number of the left and right MLG side brace actuator assemblies having part number (P/N) 40310–103, in accordance with paragraphs 2.A. and 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 100–32–30, dated December 18, 2017; or perform an inspection to verify the serial number of the left and right MLG side brace actuator assemblies having P/N 2–8554–2, in accordance with paragraphs 2.A. and 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 350–32–006, dated December 18, 2017; as applicable. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number can be conclusively determined from that review.

Figure 1 to paragraphs (g) and (h) of this AD – *Compliance Times*

Airplane cycles	Compliance Time
As of the effective date of this AD: 3,350 total flight cycles or fewer	Before accumulating 3,750 total flight cycles, or within 48 months after the effective date of this AD, whichever occurs first
As of the effective date of this AD: more than 3,350 total flight cycles	Within 400 flight cycles or 12 months after the effective date of this AD, whichever occurs first

(h) Replacement

If, during the inspection specified in paragraph (g) of this AD, the serial number of the part installed is listed in table 1 of paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 100–32–30, dated December 18, 2017; or table 1 of paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 350–32–006, dated December 18, 2017; as applicable: at the applicable time specified in figure 1 to paragraphs (g) and (h) of this AD, replace the split ball bearing having P/N 104467672, in accordance with paragraph 2.C. of the Accomplishment Instructions of Bombardier Service Bulletin 100–32–30, dated December 18, 2017; or paragraph 2.C. of the Accomplishment Instructions of Bombardier Service Bulletin 350–32–006, dated December 18, 2017; as applicable. If the serial number of the installed part is not listed in table 1 of paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 100–32–30, dated December 18, 2017; or table 1 of paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 350–32–006, dated December 18, 2017; as applicable; no further action is required by this paragraph.

(i) Parts Installation Limitation

As of the effective date of this AD, no person may install on any Bombardier, Inc., Model BD–100–1A10 airplane any MLG side brace actuator assembly having a serial number listed in table 1 of paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 100–32–30, dated December 18, 2017; or table 1 of paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 350–32–006, dated December 18, 2017; as applicable; unless the split ball bearing having P/N 104467672 has been previously replaced as specified in paragraph (h) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–20, dated July 27, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0965.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, Mechanical Systems and Admin Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 100–32–30, dated December 18, 2017.

(ii) Bombardier Service Bulletin 350–32–006, dated December 18, 2017.

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com*.

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Des Moines, Washington, on April 8, 2019.

Michael J. Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–08095 Filed 4–22–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 120

Office of the Secretary of Transportation

49 CFR Parts 40

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 199

Federal Transit Administration

49 CFR Part 655

RIN 2105–AE78

Conforming Amendments and Technical Corrections to Department Rules Implementing the Transportation Industry Drug Testing Program

AGENCY: Office of the Secretary of Transportation (OST), Federal Aviation Administration (FAA), Federal Transit Administration (FTA), and Pipeline and Hazardous Materials Safety Administration (PHMSA); U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule makes minor technical corrections to the OST, FAA, FTA, and PHMSA regulations governing drug testing for safety-sensitive employees to ensure consistency with the recent amendments made to the Department of Transportation's regulation, ''Procedures for Transportation Workplace Drug and Alcohol Testing Programs,'' which added requirements to test for oxycodone, oxymorphone, hydrocodone, and hydromorphone to DOT-regulated drug testing programs. The changes to the Department's regulation make it necessary to refer to these substances, as well as the previously covered drugs morphine, 6-acetylmorphine, and codeine, by the more inclusive term ''opioids,'' rather than ''opiates.'' This rule amends the term in the FAA, FTA, and PHMSA regulations to ensure that all DOT drug testing rules are consistent with one another and with the Mandatory Guidelines for Federal Workplace Drug Testing Programs. In addition, this rule makes a conforming amendment to include the term ''opioids'' in the wording of the Department's annual information collection requirement and clarifications to section 40.26 and Appendix H regarding the requirement for employers to follow the Department's instructions for the annual information collection.

DATES: This rule is effective on April 23, 2019.

FOR FURTHER INFORMATION CONTACT: For OST, Patrice M. Kelly, Director, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202–366–3784; email: *ODAPCwebmail@dot.gov*). For FTA, for program issues, contact Iyon Rosario, Office of Transit Safety and Oversight (TSO), FTA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 (telephone: 202–366–2010; email: *Iyon.Rosario@dot.gov*). For legal issues, contact Bruce Walker, Office of Chief Counsel (TCC), FTA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 (telephone: 202–366–9109; email: *Bruce.Walker@dot.gov*). For FAA, Rafael Ramos, Office of Aerospace Medicine, Drug Abatement Division, AAM–800, FAA, 800 Independence Avenue SW, Washington, DC 20591 (telephone 202–267–8442; facsimile 202–267–5200; email: *drugabatement@faa.gov*). For PHMSA, Wayne Lemoi, Drug and Alcohol Program Manager, PHMSA Office of Pipeline Safety (telephone 909–937–7232, email *wayne.lemoi@dot.gov*).

SUPPLEMENTARY INFORMATION:

Background

On January 23, 2017, the Department of Health and Human Services (HHS) published its final version of its Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (HHS Mandatory Guidelines) (82 FR 7920). In that final rule, HHS added four semi-synthetic opioid substances (hydrocodone, hydromorphone, oxycodone, and oxymorphone) to the drugs for which laboratories test under the HHS Mandatory Guidelines. That rule became effective October 1, 2017.

By statute, the Department of Transportation is required to follow the HHS Mandatory Guidelines for the

drugs for which it tests in the transportation industry drug testing program. Consequently, the Department issued a notice of proposed rulemaking (NPRM) on January 23, 2017 (82 FR 7771). In that NPRM, the Department proposed to revise 49 CFR part 40 (part 40) to harmonize with certain parts of the revised HHS Mandatory Guidelines. The Department received 69 comments on the NPRM from various stakeholders, which were addressed in the final rule published on November 13, 2017.

The Department's final rule, among other things, added the four semi-synthetic opioid substances (hydrocodone, hydromorphone, oxycodone, and oxymorphone) to the Department's drug testing program (82 FR 52229). The Department's final rule became effective on January 1, 2018. These testing requirements are now codified at 49 CFR 40.85(d) and 40.87.

Before the 2017 HHS and DOT rulemakings, laboratories under the HHS Mandatory Guidelines and Part 40 tested for codeine, 6-acetylmorphine, and morphine, properly referred to as ''opiates.'' The four substances added in the DOT 2017 final rule are semi-synthetic substances, closely related to opiates but chemically distinct. For this reason, it is more accurate to refer to all six substances under the more inclusive term ''opioids.''

DOT Management Information System Form

The 2017 DOT final rule changed the terminology from ''opiates'' to ''opioids'' throughout part 40, with one minor exception in the DOT's Management Information System (MIS) Form. Specifically, we did not change the term ''opiates'' to ''opioids'' within the MIS Form in order to avoid any confusion on what employers were to report for the 2017 calendar year MIS reporting period. Since testing for the semi-synthetic opioids began in calendar year 2018, employers would not need to report that data until after January 1, 2019. Therefore, we are now updating the MIS Form to be consistent with the rest of part 40. The costs for the additional opioid testing were addressed in the final rule dated November 13, 2017.

In addition, in our November 13, 2017, final rule (82 FR 52243), we moved the instructions to the MIS data collection form from Appendix H to our website. We did so to provide greater flexibility to make changes and/or updates to the MIS instructions. We did not intend for this to suggest that employers were no longer required to use the MIS instructions as they have been required to do by part 40 and the respective DOT Agency regulations since 2003. Therefore, we are making a technical amendment to § 40.26 and Appendix H to part 40 to clarify the requirement for employers to use the MIS instructions.

Discussion

The Department's 2017 final rule was promulgated under the authority of the Omnibus Transportation Employee Testing Act (OTETA) of 1991 (Pub. L. 102–143, Title V, 105 Stat. 952). The OTETA sets the requirements for DOT's reliance on the HHS Mandatory Guidelines for scientific testing issues. Section 503 of the Supplemental Appropriations Act, 1987 (Pub. L. 100–71, 101 Stat 391, 468), 5 U.S.C. 7301, and Executive Order 12564 establish HHS as the agency that directs scientific and technical guidelines for Federal workplace drug-testing programs and standards for certification of laboratories' regulated programs. While the Department has discretion concerning many aspects of the regulations governing testing in the transportation industries' regulated programs, we must follow the HHS Mandatory Guidelines for the drugs for which we require testing.

The final rule follows that same mandate with respect to 49 CFR part 40 (OST), 14 CFR part 120 (FAA), and 49 CFR part 655 (FTA), all of which are directly subject to the OTETA mandate to conform to the HHS Mandatory Guidelines. Although PHMSA is not one of the agencies mentioned in OTETA, PHMSA's drug testing rule (49 CFR part 199) has always incorporated part 40 procedures, and it is important for all DOT drug testing regulations, and their terminology, to remain consistent. For this reason, we are changing the definition of ''prohibited drug'' in part 199 to directly reference part 40 and not the Controlled Substances Act.

In the OST rule, in Appendix H, the MIS form, in Section III, ''Drug Testing Data,'' the word ''opiates'' in Column 7 is being changed to ''opioids.''

In the FAA rule, the FAA is revising the definition of ''prohibited drug'' in § 120.7(m) to mean any of the drugs specified in part 40. The FAA is also revising §§ 120.107 and 120.109 to replace the list of drugs and drug metabolites with the term ''prohibited drug.'' These changes will harmonize part 120, in pertinent part, with part 40. In § 120.109(c) the words ''can not'' are being corrected to ''cannot.''

In the FTA rule, the FTA is replacing the term ''opiates'' with ''opioids'' in 49 CFR 655.21(b)(3).

In the PHMSA rule, 49 CFR 199.5, pipeline operators are required to conduct their anti-drug programs according to the requirements of part 199 and the DOT Procedures in part 40. Moreover, the regulations explain that the terms and concepts used in part 199 have the same meaning as in the DOT Procedures in part 40. The ODAPC final rule, dated November 13, 2017, changed the definition of ''drug'' in 49 CFR 40.3 to: ''The drugs for which tests are required under this part and DOT Agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opioids.'' As a conforming amendment, PHMSA is changing the definition of ''prohibited drug'' in part 199 to align it with the recently changed definition of ''drugs'' in part 40. Instead of referencing the Controlled Substances Act, the definition of ''prohibited drug'' will now reference part 40. This change will also conform with the requirement under part 40 that the drug test panel includes the four semi-synthetic opioids (*i.e.,* hydrocodone, oxycodone, hydromorphone, oxymorphone) in addition to the three natural opiates (*i.e.,* heroin, morphine, codeine) previously included in DOT drug tests.

Regulatory Analyses and Notices

Good Cause for Immediate Adoption Without Prior Notice and Comment

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with prior notice and comment for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

As discussed above, this final rule revises the terminology in the respective OST, FAA, FTA, and PHMSA drug testing rules to conform to the Department of Transportation's final rule requiring testing for semi-synthetic opioids. Also, as discussed above, OST, FAA, and FTA are statutorily required to incorporate the Department of Health and Human Services (HHS) scientific and technical guidelines, including mandatory guidelines establishing the list of controlled substances which individually may be tested. While PHMSA is not subject to the OTETA mandate to follow the HHS Mandatory Guidelines, the PHMSA rule already required compliance with part 40. The terminological changes involved will not make substantive changes in the obligations of regulated parties but clarify those parties' obligations. For these reasons, we find that it is

unnecessary to seek public comment before issuing this final rule.

There will be no additional costs associated with any of these changes, which are all administrative. Each of these changes removes inconsistencies and harmonizes with changes made to the HHS Mandatory Guidelines in January of 2017 that were incorporated into 49 CFR part 40 on November 13, 2017. Any costs associated with the substantive rulemaking changes to add the semi-synthetic opioids were accounted for in the final rule dated November 13, 2017 (82 FR 52229).

Similarly, section 553(d)(3) of the APA requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule. DOT finds that, for the same reasons stated above, there is good cause to make these amendments effective immediately.

Executive Order 12866 and 13563

Executive Order 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule implements changes that are administrative in nature. All agencies involved have determined that this action is not a significant regulatory action under section 3(f) of Executive Order 12866, nor is it significant within the meaning of Department of Transportation regulatory policies and procedures.

This rule provides technical corrections to the cited regulations harmonizing them with part 40. The only entities affected by this rule are those aviation, transit, and pipeline entities already subject to DOT drug testing rules and the changes made to part 40 by the final rule dated November 13, 2017. This rule does not require any additional costs associated with compliance. Accordingly, it has not been reviewed by the Office of Management and Budget.

This rule is not expected to impose any new compliance costs, and would not adversely affect, in any material way, any sector of the economy. There are no significant changes to the existing program with the publication of this rulemaking. Additionally, this rule does not interfere with any action planned by another agency and does not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Executive Order 13771

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because this rule adopts Departmental regulatory requirements pursuant to part 40, the involved agencies have determined that there is good cause to adopt the rule as a final rule; therefore, RFA analysis is not required. Additionally, this administrative action will result in no significant economic impact nor impose any additional cost to small entities that are subject to alcohol misuse and controlled substance testing requirements of the cited regulations.

Paperwork Reduction Act

This rule does not provide a new collection of information that is subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under the provisions of the Paperwork Reduction Act, the affected agencies may not conduct or sponsor, and a person is not required to respond to or may not be penalized for failing to comply with, a collection of information unless it displays a currently valid OMB control number.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have Federalism implications. That is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

The agencies involved have reviewed this rule under the threshold criteria of Executive Order 13132 on Federalism and certify that the rule would not have Federalism implications as defined by the Executive Order. The rule would not significantly affect the rights, roles, and responsibilities of States, and would not involve preemption of State law, nor would it limit State policymaking discretion.

Unfunded Mandates Reform Act

This rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $148.1 million or more in any one year (2 U.S.C. 1532).

Executive Order 13175 (Tribal Consultation)

The agencies involved have analyzed this action under Executive Order 13175, and determined that this rule would not have substantial direct effects on one or more Indian Tribes; would not impose substantial direct compliance costs on Indian Tribal governments; and would not preempt Tribal law.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. Id. Paragraph 4(c)(5) of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Transit Administration's implementing procedures, ''[p]lanning and administrative activities that do not involve or lead directly to construction, such as: . . . promulgation of rules, regulations, directives . . .'' 23 CFR 771.118(c)(4). The purpose of this rulemaking is to make minor technical corrections to the Department's drug-testing regulations. The Department does not anticipate any environmental impacts and there are no extraordinary

circumstances present in connection with this rulemaking.

International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation (ICAO), it is FAA policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that its portion of this final rule does not conflict with any international agreement of the United States.

List of Subjects

14 CFR Part 120

Air carriers, Alcoholism, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Operators, Reporting and recordkeeping requirements, Safety, Safety-sensitive, Transportation.

49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 655

Mass transportation, Alcohol testing, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation.

In consideration of the foregoing, the Department of Transportation and its agencies amend their regulations as follows:

Title 14—Aeronautics and Space

PART 120—DRUG AND ALCOHOL TESTING PROGRAM

■ 1. The authority citation for part 120 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101–40103, 40113, 40120, 41706, 41721, 44106, 44701, 44702, 44703, 44709, 44710, 44711, 45101–45105, 46105, 46306.

■ 2. In § 120.7, revise paragraph (m) to read as follows:

§ 120.7 Definitions.

* * * * *

(m) *Prohibited drug* means any of the drugs specified in 49 CFR part 40.

* * * * *

■ 3. Revise § 120.107 to read as follows:

§ 120.107 Substances for which testing must be conducted.

Each employer shall test each employee who performs a safety-sensitive function for evidence of a prohibited drug during each test required by § 120.109.

■ 4. In § 120.109, revise paragraphs (a)(5) and (c) to read as follows:

§ 120.109 Types of drug testing required.

* * * * *

(a) * * *

(5) Before hiring or transferring an individual to a safety-sensitive function, the employer must advise each individual that the individual will be required to undergo pre-employment testing in accordance with this subpart, to determine the presence of a prohibited drug in the individual's system. The employer shall provide this same notification to each individual required by the employer to undergo pre-employment testing under paragraph (a)(4) of this section.

* * * * *

(c) *Post-accident drug testing.* Each employer shall test each employee who performs a safety-sensitive function for the presence of a prohibited drug in the employee's system if that employee's performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident. The employee shall be tested as soon as possible but not later than 32 hours after the accident. The decision not to administer a test under this section must be based on a determination, using the best information available at the time of the determination, that the employee's performance could not have contributed to the accident. The employee shall submit to post-accident testing under this section.

* * * * *

Title 49—Transportation

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 5. The authority citation for part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*

■ 6. Revise § 40.26 to read as follows:

§ 40.26 What form must an employer use to report Management Information System (MIS) data to a DOT agency?

As an employer, when you are required to report MIS data to a DOT agency, you must use the U.S. Department of Transportation Drug and Alcohol Testing MIS Data Collection Form to report that data. You must use the form and instructions referenced at Appendix H to part 40. You must submit the MIS report in accordance with rule requirements (*e.g.,* dates for submission; selection of companies required to submit, and method of reporting) established by the DOT agency regulating your operation.

■ 7. Revise Appendix H to part 40 to read as follows:

Appendix H to Part 40—DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form

The following form is the MIS Data Collection form required for use to report calendar year MIS data. The instructions for this form are found at *https://www.transportation.gov/odapc.*

BILLING CODE 4910–9x–P

U.S. DEPARTMENT OF TRANSPORTATION DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

Calendar Year Covered by this Report: _____

OMB No. 2105-0529

Form DOT F 1385 (Rev. 4/2019)

I. Employer:

Company Name: _____

Doing Business As (DBA) Name (if applicable): _____

Address: _____ E-mail: _____

Name of Certifying Official: _____ Signature: _____

Telephone: (_____) _____ Date Certified: _____

Prepared by (if different): _____ Telephone: (_____) _____

C/TPA Name and Telephone (if applicable): _____ (_____) _____

Check the DOT agency for which you are reporting MIS data; and complete the information on that same line as appropriate:

___ FMCSA – Motor Carrier: DOT #: _____ Owner-operator: (circle one) YES or NO Exempt (Circle One) YES or NO

___ FAA – Aviation: Certificate # (if applicable): _____ Plan / Registration # (if applicable): _____

___ PHMSA – Pipeline: (Check) Gas Gathering__ Gas Transmission__ Gas Distribution__ Transport Hazardous Liquids__ Transport Carbon Dioxide__

___ FRA – Railroad: Total Number of observed/documented Part 219 "Rule G" Observations for covered employees: _____

___ USCG – Maritime: Vessel ID # (USCG- or State-Issued): _____ (If more than one vessel, list separately.)

___ FTA – Transit

II. Covered Employees: **(A) Enter Total Number Safety-Sensitive Employees In All Employee Categories:** _____

(B) Enter Total Number of Employee Categories: _____

(C)

Employee Category	Total Number of Employees in this Category

If you have multiple employee categories, complete Sections I and II (A) & (B). Take that filled-in form and make one copy for each employee category and complete Sections II (C), III, and IV for each separate employee category.

III. Drug Testing Data:

	1	2	3	4	5	6	7	8	9	10	11	12	13
									Refusal Results				
Type of Test	Total Number Of Test Results [Should equal the sum of Columns 2, 3, 9, 10, 11, and 12]	Verified Negative Results	Verified Positive Results – For One Or More Drugs	Positive For Marijuana	Positive For Cocaine	Positive For PCP	Positive For Opioids	Positive For Amphetamines	Adulterated	Substituted	"Shy Bladder" – With No Medical Explanation	Other Refusals To Submit To Testing	Cancelled Results
Pre-Employment													
Random													
Post-Accident													
Reasonable Susp./Cause													
Return-to-Duty													
Follow-Up													
TOTAL													

IV. Alcohol Testing Data:

	1	2	3	4	5	6	7	8	9
							Refusal Results		
Type of Test	Total Number Of Screening Test Results [Should equal the sum of Columns 2, 3, 7, and 8]	Screening Tests With Results Below 0.02	Screening Tests With Results 0.02 Or Greater	Number Of Confirmation Tests Results	Confirmation Tests With Results 0.02 Through 0.039	Confirmation Tests With Results 0.04 Or Greater	"Shy Lung" – With No Medical Explanation	Other Refusals To Submit To Testing	Cancelled Results
Pre-Employment									
Random									
Post-Accident									
Reasonable Susp./Cause									
Return-to-Duty									
Follow-Up									
TOTAL									

BILLING CODE 4910–9x–C

PART 199—DRUG AND ALCOHOL TESTING

■ 8. The authority citation for part 199 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

■ 9. In § 199.3, revise the definition of ''*Prohibited drug*'' to read as follows:

§ 199.3 Definitions.

* * * * *

Prohibited drug means any of the substances specified in 49 CFR part 40.

* * * * *

PART 655—PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT OPERATIONS

■ 10. The authority citation for part 655 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.91.

■ 11. Amend § 655.21 by revising paragraph (b)(3) to read as follows:

§ 655.21 Drug testing.

* * * * *

(b) * * *

(3) Opioids;

* * * * *

Issued in Washington, DC, on Tuesday, March 19, 2019.

Elaine L. Chao,

Secretary of Transportation.

Daniel K. Elwell,

Acting Administrator, Federal Aviation Administration.

[FR Doc. 2019–06986 Filed 4–22–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[Docket No. OAG 155; A.G. Order No. 4442–2019]

RIN 1105–AB51

Department of Justice Freedom of Information Act Regulations

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, after consideration of the public comments, adopts without change the interim final rule amending the Department's regulations under the Freedom of Information Act (FOIA) that was published on January 4, 2017.

DATES: This rule is effective April 23, 2019.

FOR FURTHER INFORMATION CONTACT: Lindsay Roberts, Attorney-Advisor, Office of Information Policy, (202) 514–3642.

SUPPLEMENTARY INFORMATION: The Department issued an interim final rule amending the Department's regulations under the Freedom of Information Act (FOIA) to incorporate certain changes made to the FOIA, 5 U.S.C. 552, by the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538 (June 30, 2016). 82 FR 725 (Jan. 4, 2017) Those changes included providing requesters 90 days to submit an administrative appeal and implementing certain notice requirements for FOIA response letters. The rule also updated the requirements pertaining to two FOIA fee categories, ''representative of the news media'' and ''educational institution,'' to reflect recent decisions by the Court of Appeals for the District of Columbia Circuit. The rule went into effect on February 3, 2017. The Department received three public comments about the interim final rule. After carefully reviewing and considering all comments, the Department has determined to adopt the provisions of the interim rule in final form without change.

The first commenter did not suggest any changes to the rule, but instead generally provided his opinion on the importance of the FOIA and how it should operate.

The second comment pertained to duplication fees for student requesters and the services provided by the Office of Government Information Services (OGIS). The commenter noted that it is important for students to be able to obtain documents in a reasonably cost-effective manner, which is reflected in the decision rendered by the Court of Appeals for the District of Columbia Circuit in *Sack* v. *DOD,* 823 F.3d 687 (D.C. Cir. 2016). The commenter indicated that, despite qualifying for educational institution requester status, students will still be required to pay duplication fees. The commenter stated that duplication fees may become obsolete over time as records are maintained electronically and responses are likewise provided electronically. The commenter encouraged the Department to keep all records electronically to reduce duplication fees. The commenter suggested that the Department consider removing duplication fees, unless the component certifies that the records being produced are in paper format and the component does not possess an electronic copy.

The Department considered this comment and declines to remove the provision for charging applicable duplication fees to educational institutions. The FOIA provides that agencies shall promulgate regulations providing for reasonable standard charges for duplication fees, which are the only type of fees assessed to educational institution requesters. See 5 U.S.C. 552(a)(4)(A)(ii)(II). The Department's regulations contain the

directive that components ''ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner.'' 28 CFR 16.10(a). Further, requesters qualifying as educational institutions are provided the first 100 pages of duplication (or the cost equivalent) without charge. § 16.10(d)(4)(i). Moreover, any requester may seek a fee waiver. Components grant fee waivers if the requester has demonstrated that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. 552(a)(4)(A)(iii); 28 CFR 16.10(k)(1). For all these reasons, the Department believes that no changes are needed to the provisions concerning the assessment of duplication fees for educational institutions.

The second commenter also provided his opinion about the helpfulness of advising requesters about the services available from the FOIA Public Liaison and OGIS. In response, the Department notes that the interim rule already directs components to inform requesters of the availability of the FOIA Public Liaison when providing notice of unusual circumstances and in all final responses. The Department also informs requesters of the services provided by OGIS when giving notice of unusual circumstances and in all adverse determinations. *See* 28 CFR 16.5(c) and 16.6(e)(5).

This commenter also suggested that § 16.8(d) be amended to require components to provide an explanation to the requester if a component chooses not to participate in mediation. The Department declines to make this change. Mediation is a voluntary process and the statute does not require agencies to provide an explanation if they choose not to engage in this process. Consistent with the statute, the Department provides multiple opportunities for the requester and agency to communicate about a request. The Department also encourages components to have open communication with requesters throughout the request process and requesters can contact the component's FOIA Requester Service Center and FOIA Public Liaison any time during the processing of their request. As part of these communications, components may choose to explain why they decided not to participate in mediation in any given case.

The third commenter raised concerns about the exclusive use of web portals to accept FOIA requests electronically at some components. The commenter noted that different components have different portals, which can be confusing for requesters, and that some components also accept requests via email. The commenter suggested amending § 16.3(a) to require all components to accept requests via email, as well as through a portal or other means, and amending § 16.8(a) to require the Office of Information Policy (OIP) to receive appeals via email, in addition to using an online portal and other means. Currently, components must have the capability to accept requests electronically either through email or a web portal, but they are not required to provide both capabilities.

The Department considered this comment but, due to the efficiencies gained by using portals, declines to require components to receive requests and appeals via email in addition to online portals, or other methods. The Department recognizes that it may seem easier for requesters to have the option to use email instead of a web portal. Using web portals, though, actually provides significant efficiencies for both requesters and components when compared to email. For example, when a requester submits a request via a web portal the component can start working on the request immediately upon receipt rather than having to manually enter the information contained in the email into the component's tracking system. Particularly for components that receive thousands of requests each year, this time savings can be significant and benefits requesters overall. Moreover, web portals also help requesters ensure that they provide all required information when submitting their request or appeal, a capability that is not available when requesters submit via email. Without any built-in structure, an email request might omit essential information and require the component to engage in additional back and forth with the requester before processing can begin. By contrast, a web portal form will guide the requester through the process, helping to ensure that all necessary information is provided from the start. This allows the component to start processing the request more quickly than would occur if it needed additional information from a requester who submitted an incomplete request via email. Again, this benefits all requesters.

The Department is committed to making it easy for the public to submit requests and appeals. The Department's FOIA Reference Guide, available on OIP's website, provides detailed instructions for making requests, and OIP maintains a single page on its website that lists contact information for all components. Every component has a FOIA Requester Service Center and FOIA Public Liaison who are available to answer questions about submitting requests. OIP works with components through the administrative appeal process and through its general compliance functions to help ensure that components' procedures are requester-friendly. Components are continually working to streamline the request and appeal submission process to the extent feasible while also striving to use available resources most efficiently to ensure faster processing to benefit all requesters. Finally, the Department has developed a National FOIA Portal that the public can use to make requests that is designed to help standardize the request-making process across the government. The National FOIA Portal also contains a wealth of information to educate requesters on the FOIA and assist them in making requests. The National FOIA Portal contains a customized form for each agency and agency component that both follows a uniform format and provides a link to the authority for any specialized requirements that an agency or component might have for making requests. These features are designed to simplify and standardize the request-making process for the public. We expect to continually improve the functionality of the National FOIA Portal over time.

Regulatory Certifications

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation, and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation.

The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Both Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Department conducted the required assessment for the interim final

rule and this rule finalizes those regulations without change.

Regulatory Flexibility Act

This rule finalizes the amendment of the Department of Justice's regulations under the FOIA to incorporate certain changes made by the FOIA Improvement Act of 2016, and to reflect developments in the case law and to streamline the description of the factors to be considered when making fee waiver determinations. Because the Department was not required to publish a notice of proposed rulemaking for this rule, a Regulatory Flexibility analysis is not required. 5 U.S.C. 603(b).

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act. 5 U.S.C. 804.

Paperwork Reduction Act

This rule imposes no information collection or record keeping requirements.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Freedom of information, Privacy.

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Accordingly, the interim rule amending 28 CFR part 16, which was published at 82 FR 725 on January 4, 2017, is adopted as a final rule without change.

Dated: April 17, 2019.

William P. Barr,

Attorney General.

[FR Doc. 2019–08122 Filed 4–22–19; 8:45 am]

BILLING CODE 4410–BE–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100, 117, 147, and 165

[USCG–2019–0255]

2019 Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations, Drawbridge Operation Regulations and Regulated Navigation Areas

AGENCY: Coast Guard, DHS.

ACTION: Notification of expired temporary rules issued.

SUMMARY: This document provides notification of substantive rules issued by the Coast Guard that were made temporarily effective but expired before they could be published in the **Federal Register**. This document lists temporary safety zones, security zones, special local regulations, drawbridge operation regulations and regulated navigation areas, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This document lists temporary Coast Guard rules that became effective, primarily between December 2018 and March 2019, unless otherwise indicated, and were terminated before they could be published in the **Federal Register**.

ADDRESSES: Temporary rules listed in this document may be viewed online, under their respective docket numbers, at *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this document contact Deborah Thomas, Office of Regulations and Administrative Law, telephone (202) 372–3864.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events. *Drawbridge operation regulations* authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. *Regulated Navigation Areas* are water areas within a defined boundary for which regulations for vessels navigating within the area have been established by the regional Coast Guard District Commander.

Timely publication of these rules in the **Federal Register** may be precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, often informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the end of the effective period, mariners were personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas or drawbridge operation regulations by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

The following unpublished rules were placed in effect temporarily during the period between December 2018 and March 2019 unless otherwise indicated. To view copies of these rules, visit *www.regulations.gov* and search by the docket number indicated in the following table.

Docket No.	Type	Location	Effective date
USCG–2018–0818	Safety Zones (Parts 147 and 165)	Sunken Vessel Charleston Harbor; Charleston, SC.	11/18/18
USCG–2018–0914	Security Zones (Part 165)	Potomac River and Anacostia River, Washington, DC.	12/3/18
USCG–2018–1113	Safety Zones (Parts 147 and 165)	Downtown Sandusky Fireworks, Lake Erie, Sandusky, OH.	12/31/18
USCG–2018–1112	Safety Zones (Parts 147 and 165)	Ohio River, Vanport, PA	1/1/19
USCG–2018–1086	Safety Zones (Parts 147 and 165)	Tennessee River, Huntsville, AL	1/4/19
USCG–2019–0008	Safety Zones (Parts 147 and 165)	Tennessee River, Huntsville, AL	1/9/19
USCG–2019–0021	Security Zones (Part 165)	Corpus Christi Ship Channel, Corpus Christi, TX.	1/12/19
USCG–2018–1059	Safety Zones (Parts 147 and 165)	Tappan Zee Bridge Demolition, Hudson River; Tarrytown, NY.	1/12/19
USCG–2018–1111	Safety Zones (Parts 147 and 165)	Fireworks Displays in the Fifth Coast Guard District.	1/13/19
USCG–2018–1116	Safety Zones (Parts 147 and 165)	Atlantic Intracoastal Waterway, Camp Lejeune, NC.	1/15/19
USCG–2019–0026	Safety Zones (Parts 147 and 165)	Tennessee River, Calvert City, KY	1/16/19
USCG–2019–0006	Safety Zones (Parts 147 and 165)	Ohio River, Owensboro, KY	1/19/19
USCG–2018–1115	Drawbridges (Part 117)	Newport River, Beaufort, NC	1/25/19
USCG–2019–0007	Special Local Regulations (Part 100)	Gasparilla Marine Parade; Hillsborough Bay; Tampa, FL.	1/26/19
USCG–2018–1120	Special Local Regulations (Part 100)	Hanohano Ocean Challenge, San Diego, CA	1/26/19
USCG–2019–0027	Safety Zones (Parts 147 and 165)	Pier 84; Fireworks Display in the COTP, NY	2/11/19
USCG–2018–1109	Safety Zones (Parts 147 and 165)	Murden Cove, Bainbridge Island, WA	2/26/19
USCG–2019–0204	Safety Zones (Parts 147 and 165)	Squalicum Harbor, WA	3/16/19
USCG–2019–0173	Security Zones (Part 165)	Charleston Harbor and Cooper River, Charleston, SC.	3/19/19

Dated: April 18, 2019.

Katia Kroutil,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2019–08120 Filed 4–22–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2017–0181]

RIN 1625–AA01

Anchorage Grounds; Baltimore Harbor, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its Baltimore Harbor anchorage grounds regulation. The changes will reduce the size of three general anchorages, establish one new general anchorage, rename two existing general anchorages, and change the duration a vessel may remain within an anchorage for two existing general anchorages. This rule will ensure that Coast Guard regulations are consistent with the U.S. Army Corps of Engineers Baltimore District Port of Baltimore Anchorages and Channels civil works project that widened the channel, and provide a higher degree of safety to persons, property and the environment by accurately depicting the anchorage locations. The changes to the regulated uses of the anchorages will support current and future port activity related to the safety of post-Panamax commercial cargo vessels, and will remove vessel security provisions that currently exist in these Baltimore Harbor regulations.

DATES: This rule is effective May 23, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0181 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald L. Houck, U.S. Coast Guard, Sector Maryland-National Capital Region, Waterways Management Division, Coast Guard; telephone (410) 576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

Anchorage regulation duties and powers were transferred to the Coast Guard in 1967 (32 FR 17726, Dec. 12, 1967). On December 12, 1968, the Fifth Coast Guard District published a final rule in the **Federal Register** (33 FR 18438) establishing an anchorage area in Baltimore Harbor, Maryland. The anchorage grounds at Baltimore, Maryland are described in 33 CFR 110.158. These anchorage grounds are involved in a federal navigation project under the jurisdiction of the U.S. Army Corps of Engineers Baltimore District. Section 101a(22) of the Water Resources Development Act of 1999 (Pub. L. 106–53, 113 Stat 269 (1999)) authorized widening of the Dundalk and Seagirt Marine Terminal channels. Widening of the Seagirt Marine Terminal channel occurred in 2015. This dredging widened the limits of existing navigation channels which are used to access key Maryland Port Administration marine terminals located immediately adjacent to the Baltimore Harbor, Maryland anchorage grounds, and put the existing anchorage grounds in the way of the newly expanded navigation channels. To addresses these changes, Sector Maryland-National Capital Region, Baltimore, Maryland, worked in coordination with the Port of Baltimore Harbor Safety and Coordination Committee to develop proposed

revisions to the affected anchorage boundaries and associated regulations. On August 14, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Anchorage Grounds; Baltimore Harbor, Baltimore, MD'' (83 FR 40164). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this anchorage grounds. During the comment period that ended November 13, 2018, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 471, 2071; 46 U.S.C 70034; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds. The purpose of this rule is to reduce navigational safety risk and support port efficiency in Baltimore Harbor. This regulation will designate a new general anchorage ground developed from an existing anchorage ground that is located outside of the established navigation channel in order to align with the existing U.S. Army Corps of Engineers Baltimore District Port of Baltimore Anchorages and Channels civil works project. The Baltimore Harbor anchorage grounds are typically used by deep draft commercial cargo vessels. In order to maximize the availability and use of these important anchorages, this regulation will also change the duration for which vessels may remain in these anchorages. This regulation will reduce the duration a vessel may remain within Anchorage No. 3 Lower (renumbered as Anchorage No. 3A) and Anchorage No. 4, from 72 hours to 24 hours. Lastly, due to similar provisions within the Maritime Transportation Security Act of 2002 (MTSA) (*Pub. L. 107–295*) and federal regulations (33 CFR part 104, and 46 CFR chapter 1, subchapters N and O), the vessel security requirements in § 110.158(d) are now redundant and will be removed as part of this regulation.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published August 14, 2018. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule amends the Baltimore Harbor, Maryland anchorage grounds as described in 33 CFR 110.158. The general anchorages currently listed in the regulation that are affected by this rule are Anchorage No. 2, Anchorage No. 3 Upper, Anchorage No. 3 Lower, Anchorage No. 4, Anchorage No. 5 and Anchorage No. 6.

This rule reduces the sizes of Anchorage No. 2, Anchorage No. 3 Lower, and Anchorage No. 4. These reductions will remove the portions of the anchorage grounds that are in the navigable channel. The area of Anchorage No. 2 is reduced by approximately 16,330 square yards along its northern limit and approximately 326,770 square yards along its eastern limit. The area of Anchorage No. 3 Lower is reduced at its eastern limit by 12,560 square yards. The area of Anchorage No. 4 is reduced at its western limit by 6,000 square yards.

This rule renames Anchorage No. 3 Lower to Anchorage No. 3A, and renames Anchorage No. 3 Upper to Anchorage No. 3B. This rule revises Anchorage No. 2 and creates an area called Anchorage No. 3C out of existing anchorage ground from Anchorage No. 2. An area within Anchorage No. 2 that is approximately 500 yards in length and 165 yards in width, and adjacent to Anchorage No. 3 Upper, becomes Anchorage No. 3C. This reconfiguration does not provide new space available for anchorage, will not restrict traffic, and is located outside of the established navigation channel. A graphic depicting these changes is included in the docket.

This rule will reduce the duration a vessel may remain within Anchorage No. 3 Lower (renumbered as Anchorage No. 3A) and Anchorage No. 4, from 72 hours to 24 hours. These changes are based on recommendations documented by the Port of Baltimore Harbor Safety and Coordination Committee on September 8, 2010, and the Association of Maryland Pilots. The Port of Baltimore Harbor Safety and Coordination Committee's recommendation is available in the docket. The Coast Guard agrees that the Committee's recommendation addresses the problem of ensuring maximum availability and use of these anchorages. In addition, this rule establishes that a vessel may remain within Anchorage No. 3C for no more than 72 hours without permission from the Captain of the Port, to remain consistent with the regulations for Anchorage No. 2.

This rulemaking renumbers several paragraphs listed in 33 CFR 110.158, from (a)(3) Anchorage No. 3, Upper, general anchorage, through (a)(8) Anchorage No. 7, Dead ship anchorage. All anchorage ground descriptions will be updated to state they are in the waters of the Patapsco River, except for Anchorage No. 7, Dead ship anchorage, which will be updated to state it is in the waters of Curtis Bay. Designation of the new Anchorage No. 3C will create a new paragraph, (a)(9) for Anchorage No. 7, Dead ship anchorage. This rulemaking modifies paragraph (c)(3) of the general regulations to remove the reference to a vessel becoming ''a menace'' because we do not define that term and we don't believe it is needed given other factors already included in that paragraph. We also change the defined term ''dangerous cargo'' to ''certain dangerous cargo'' without changing the definition, continuing to incorporate the definition of certain dangerous cargo from 33 CFR 160.202, and aligning terminology used in this rule with that used throughout the rest of 33 CFR 110.158. This rulemaking removes paragraphs (c)(4) regarding revocable permits for habitual use of an anchorage, and paragraph (d) in its entirety, as described in section III above.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the following: (i) It will not interfere with existing maritime activity in Baltimore Harbor, (ii) the changes will reduce navigational safety risk in Baltimore Harbor by: (1) Aligning existing general anchorage boundaries with recent dredging projects that widened the limits of adjacent navigational channels, (2) reducing the duration a vessel may remain within an anchorage to increase availability and usage, and (3) renaming and reconfiguring general anchorages that support a proper naming and numbering convention within the existing anchorage regulation, and (iii) the

reconfiguration of the additional general anchorage does not provide additional anchorage area and will not restrict traffic, as it is developed from an existing anchorage and is located outside of the established navigation channel. As discussed in section IV above, this rule will replace the ''dangerous cargo'' definition with one for ''certain dangerous cargo'' and remove vessel security provisions that are redundant to other federal regulations.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

For the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the modification of existing anchorages within the Baltimore Harbor, Maryland anchorage grounds. It is categorically excluded from further review under paragraph L59(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 110

Anchorage Grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2071; 46 U.S.C. 70034; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 110.158 to read as follows:

§ 110.158 Baltimore Harbor, MD.

(a) *Anchorage Grounds*—(1) *No. 1, general anchorage.* (i) All waters of the Patapsco River, bounded by a line connecting the following points:

Latitude	*Longitude*
39°15′13.51″ N	76°34′07.76″ W
39°15′11.01″ N	76°34′11.69″ W
39°14′52.98″ N	76°33′52.67″ W
39°14′47.90″ N	76°33′40.73″ W

(ii) No vessel shall remain in this anchorage for more than 12 hours without permission from the Captain of the Port.

(2) *Anchorage No. 2, general anchorage.* (i) All waters of the Patapsco River, bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′50.06″ N	76°33′29.86″ W
39°14′57.53″ N	76°33′37.74″ W
39°15′08.56″ N	76°33′37.66″ W
39°15′15.77″ N	76°33′28.81″ W
39°15′18.87″ N	76°33′12.82″ W
39°15′17.71″ N	76°33′09.09″ W
39°14′50.35″ N	76°32′40.43″ W
39°14′45.28″ N	76°32′48.68″ W
39°14′46.27″ N	76°32′49.69″ W
39°14′43.76″ N	76°32′53.63″ W
39°14′57.51″ N	76°33′08.14″ W
39°14′55.60″ N	76°33′11.14″ W
39°14′59.42″ N	76°33′15.17″ W

(ii) No vessel shall remain in this anchorage for more than 72 hours

without permission from the Captain of the Port.

(3) *Anchorage No. 3A, general anchorage.* (i) All waters of the Patapsco River, bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′15.66″ N	76°32′53.59″ W
39°14′32.48″ N	76°33′11.31″ W
39°14′46.27″ N	76°32′49.69″ W
39°14′32.50″ N	76°32′35.18″ W
39°14′22.37″ N	76°32′43.07″ W

(ii) No vessel shall remain in this anchorage for more than 24 hours without permission from the Captain of the Port.

(4) *Anchorage No. 3B, general anchorage.* (i) All waters of the Patapsco River, bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′32.48″ N	76°33′11.31″ W
39°14′46.23″ N	76°33′25.83″ W
39°14′57.51″ N	76°33′08.14″ W
39°14′43.76″ N	76°32′53.63″ W

(ii) No vessel shall remain in this anchorage for more than 24 hours without permission from the Captain of the Port.

(5) *Anchorage No. 3C, general anchorage.* (i) All waters of the Patapsco River, bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′46.23″ N	76°33′25.83″ W
39°14′50.06″ N	76°33′29.86″ W
39°14′59.42″ N	76°33′15.17″ W
39°14′55.60″ N	76°33′11.14″ W

(ii) No vessel shall remain in this anchorage for more than 72 hours without permission from the Captain of the Port.

(6) *Anchorage No. 4, general anchorage.* (i) All waters of the Patapsco River, bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′52.92″ N	76°32′29.60″ W
39°14′04.38″ N	76°32′41.69″ W
39°14′09.35″ N	76°32′39.89″ W
39°14′17.96″ N	76°32′26.44″ W
39°14′05.32″ N	76°32′13.09″ W
39°14′00.05″ N	76°32′17.77″ W

(ii) No vessel shall remain in this anchorage for more than 24 hours without permission from the Captain of the Port.

(7) *Anchorage No. 5, general anchorage.* (i) All waters of the Patapsco River, bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′07.89″ N	76°32′58.23″ W
39°13′34.82″ N	76°32′23.66″ W
39°13′22.25″ N	76°32′28.90″ W
39°13′21.20″ N	76°33′11.94″ W

(ii) No vessel shall remain in this anchorage for more than 72 hours without permission from the Captain of the Port.

(8) *Anchorage No. 6, general anchorage.* (i) All waters of the Patapsco River, bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′42.98″ N	76°32′19.11″ W
39°13′20.65″ N	76°31′55.58″ W
39°13′34.00″ N	76°31′33.50″ W
39°14′01.95″ N	76°32′02.65″ W
39°13′51.01″ N	76°32′18.71″ W

(ii) No vessel shall remain in this anchorage for more than 72 hours without permission from the Captain of the Port.

(9) *Anchorage No. 7, Dead ship anchorage.* (i) All waters of Curtis Bay, bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′00.40″ N	76°34′10.40″ W
39°13′13.40″ N	76°34′10.81″ W
39°13′13.96″ N	76°34′05.02″ W
39°13′14.83″ N	76°33′29.80″ W
39°13′00.40″ N	76°33′29.90″ W

(ii) The primary use of this anchorage is to lay up dead ships. Such use has priority over other uses. Permission from the Captain of the Port must be obtained prior to the use of this anchorage for more than 72 hours.

(b) *Definitions.* As used in this section—

Certain dangerous cargo means *certain dangerous cargo* as defined in § 160.202 of this chapter.

COTP means Captain of the Port Sector Maryland—National Capital Region.

(c) *General regulations.* (1) Except as otherwise provided, this section applies to vessels over 20 meters long and all vessels carrying or handling certain dangerous cargo while anchored in an anchorage ground described in this section.

(2) Except in cases where unforeseen circumstances create conditions of imminent peril, or with the permission of the Captain of the Port, no vessel shall be anchored in Baltimore Harbor or the Patapsco River outside of the anchorage areas established in this section for more than 24 hours. No vessel shall anchor within a tunnel, cable or pipeline area shown on a government chart. No vessel shall be moored, anchored, or tied up to any pier, wharf, or other vessel in such manner as to extend into established channel limits. No vessel shall be positioned so as to obstruct or endanger the passage of any other vessel.

(3) Except in an emergency, a vessel that is likely to sink or otherwise become an obstruction to navigation or the anchoring of other vessels may not occupy an anchorage, unless the vessel obtains permission from the Captain of the Port.

(4) Upon notification by the Captain of the Port to shift its position, a vessel at anchor must get underway and shall move to its new designated position within two hours after notification.

(5) The Captain of the Port may prescribe specific conditions for vessels anchoring within the anchorages described in this section, including, but not limited to, the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communication guards on selected radio frequencies.

(6) No vessel at anchor or at a mooring within an anchorage may transfer oil to or from another vessel unless the vessel has given the Captain of the Port the four hours advance notice required by § 156.118 of this chapter.

(7) No vessel shall anchor in a ''dead ship'' status (propulsion or control unavailable for normal operations) without prior approval of the Captain of the Port.

Dated: April 17, 2019.

Keith M. Smith,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2019–08116 Filed 4–22–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0241]

Safety Zones; Fireworks Displays in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Penn's Landing, Delaware River, Philadelphia, PA, safety zone from 8:30 p.m. through 9:00 p.m. on April 26, 2019. This action is necessary to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after the fireworks displays. Our regulation for safety zones of fireworks displays in the Fifth Coast Guard District identifies the regulated area for this event at Penn's Landing in Philadelphia, PA. During the enforcement periods, vessels may not enter, remain in, or transit through the safety zones during these enforcement periods unless authorized by the

Captain of the Port or designated Coast Guard patrol personnel on scene.

DATES: The regulations in the table to 33 CFR 165.506 at (a)(16) will be enforced from 8:30 p.m. through 9 p.m. on April 26, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, you may call or email Petty Officer Thomas Welker, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, telephone 215–271–4814, email *Thomas.J.Welker@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in the Table to 33 CFR 165.506, entry (a)(16) for the Delaware River Waterfront Corporation Fireworks display from 8:30 p.m. through 9 p.m. on April 26, 2019. This action is necessary to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after the fireworks displays. Our regulation for safety zones of fireworks displays within the Fifth Coast Guard District, table to § 165.506, entry (a)(16) specifies the location of the regulated area as all waters of Delaware River, adjacent to Penn's Landing, Philadelphia, PA, within 500 yards of a fireworks launch site at approximate position latitude 39°56′49″ N, longitude 075°08′11″ W. During the enforcement period, as reflected in § 165.506(d), vessels may not enter, remain in, or transit through the safety zone during the enforcement period unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notification of this enforcement period via broadcast notice to mariners.

Dated: April 18, 2019.

Scott E. Anderson,

Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.

[FR Doc. 2019–08127 Filed 4–22–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0113]

RIN 1625–AA00

Safety Zone; Lake of the Ozarks, Osage Beach, MO

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Lake of the Ozarks. This action is necessary to provide for the safety of life on these navigable waters near the Tan-Tar-A Resort, Osage Beach, MO during a fireworks display on May 4, 2019. This rulemaking will prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative.

DATES: This rule is effective on May 4, 2019 from 8:45 to 9:45 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0113 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Christian Barger, Waterways Management Division, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314–269–2560, email *Christian.J.Barger@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Upper Mississippi River
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On February 18, 2019, the Premier Pyrotechnics Inc. notified the Coast Guard that it would be conducting a fireworks display from 9 to 9:30 p.m. on May 4, 2019, for a private event taking place at the Tan-Tar-A Resort in Osage Beach, MO. The fireworks are to be launched from a barge in the Lake of the Ozarks approximately 250 feet southeast of the southern point of the resort near mile marker 26. In response, on March 15, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Lake of the Ozarks, Osage Beach, MO (84 FR 9468). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended April 15, 2019, we received five comments, all of which were in favor of the safety zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The application for this fireworks display was not received in sufficient time to permit both a comment period and for making this rule effective 30 days after publication in the **Federal Register**. The determination of good cause was made due to the fact that no comments in opposition to the proposed rule were received regarding this event, that this area is routinely used for fireworks displays throughout the year, and the fact that delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the barge launched fireworks display at this location.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the fireworks to be used in this May 4, 2019 display will be a safety concern for anyone within a 300-foot radius of the fireworks barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received five comments on our NPRM published March 15, 2019. All five comments recognized the inherent risks involved with fireworks displays and indicated favor for the proposed rule. One comment posed a concern about providing an alternate route to avoid the safety zone to ensure there would not be a buildup of vessels surrounding the zone. Waters of Lake of the Ozarks outside of the established safety zone will be available and open for all traffic, as normal. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 8:45 to 9:45 p.m. on May 4, 2019. The safety zone would cover all navigable waters within 300 feet of a barge in the Lake of the Ozarks located approximately 250 feet southeast of the southern point of the Tan-Tar-a Resort near mile marker 26. The duration of the zone is intended to ensure the safety of vessels on these navigable waters before, during, and after the scheduled fireworks display. No vessel or person would be permitted to enter the safety

zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the duration of the rule and the location of the safety zone within the waterway. This regulatory action would be in place for a period of 1 hour, within a 300 foot radius of the fireworks barge, close to the shoreline of the Tan-Tar-A Resort in Osage Beach, MO. The majority of the waterway would remain open to traffic during the fireworks display.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 1 hour that will prohibit entry within 300 feet of a barge in the Lake of the Ozarks located approximately 250 feet southeast of the southern point of the Tan-Tar-A Resort near mile marker 26. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0113 to read as follows:

§ 165.T08–0113 Safety Zone; Lake of the Ozarks, Osage Beach, MO.

(a) *Location.* The following area is a safety zone: all navigable waters of the Lake of the Ozarks within a 300-foot radius of a barge-launched fireworks display located approximately 250 feet southeast of the southern point of the Tan-Tar-A Resort near mile marker 26.

(b) *Period of enforcement.* This section will be enforced from 8:45 p.m. through 9:45 p.m. on May 4, 2019.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, persons and vessels are prohibited from entering the safety zone unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Upper Mississippi River.

(2) Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted by telephone at 314–269–2332.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public of the enforcement date and times for this safety zone, as well as any emergent safety concerns that may delay the enforcement of the zone through Local Notices to Mariners (LNMs), and/or actual notice.

Dated: April 18, 2019.

S.A. Stoermer,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2019–08126 Filed 4–22–19; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 2018–13]

Architectural Works

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is amending its regulations pertaining to the registration of architectural works. To improve the efficiency of the registration process, and encourage broader participation in the registration system, the final rule will require applicants to submit their claims using an online application, rather than a paper application. Applicants will be required to provide a date of construction, but only if the work was embodied in unpublished plans or drawings on or before December 1, 1990 and if the work was constructed before January 1, 2003. And, applicants will be encouraged—but not required—to upload a digital copy of their architectural works through the electronic registration system, instead of submitting a physical copy.

DATES: Effective May 23, 2019.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice; Erik Bertin, Deputy Director of Registration Policy and Practice; Jordana Rubel, Assistant General Counsel by telephone at 202–707–8040 or by email at *rkas@copyright.gov, ebertin@copyright.gov,* and *jrubel@copyright.gov*.

SUPPLEMENTARY INFORMATION: On December 26, 2018, the Copyright Office published a notice of proposed rule rulemaking (''NPRM'') setting forth proposed amendments to the regulations governing the registration of architectural works. 83 FR 66182 (Dec. 26, 2018). The Office received comments from three individuals who generally supported the proposal.[1] Having reviewed and carefully considered these comments, the Office is issuing a final rule that is identical to the rule proposed in the NPRM.

The final rule requires applicants to submit their claims through the electronic registration system using the Standard Application, in lieu of a paper form.[2] The rule states that applicants must provide a date of construction, but only if the architectural work was embodied in unpublished plans created prior to December 1, 1990 and if the building was constructed before January 1, 2003. The rule amends the deposit requirements by allowing applicants to submit drawings and photographs of an architectural work in any form that allows the Office to access, perceive, and examine the entire copyrightable content of the work, including by uploading the deposit through the electronic registration system in an acceptable file format. Finally, the rule confirms that architectural works are classified as ''works of the visual arts'' for purposes of registration, and it makes some technical amendments that will improve the organization and readability of the regulations.

The commenters generally supported the online filing requirement and agreed that it will improve the efficiency of the registration process. One individual expressed concern that applicants may be accustomed to using paper forms and may need time to adapt to this change. Another noted that some applicants may not have access to computers, and encouraged the Office to ''allow certain exceptions'' for such persons.[3]

The final rule provides the requested flexibility. When the rule goes into effect, applicants will be required to use the online application to register an architectural work. Paper applications submitted on Form VA will not be accepted. However, the Office will have the authority to waive the online filing requirement in ''an exceptional case'' and ''subject to such conditions as the Associate Register and Director of the Office of Registration Policy and Practice may impose on the applicant.'' Applicants who do not have a computer or internet access may contact the Office, and the Office will review the specific details of their situation to determine if a waiver is warranted.

The commenters generally supported the proposal to allow for digital uploads in lieu of physical copies, though one individual suggested that digital submissions should be mandatory rather than permissive. Sections 407 and 408 of the Copyright Act give the Register of Copyrights broad authority to issue regulations concerning the specific nature of the copies that must be submitted for purposes of registration and mandatory deposit.[4] Architectural works are typically created with computer software, and as noted in the NPRM, the Office expects that most applicants will submit their deposits in electronic form. That said, the Office

[1] All of the comments submitted in response to the NPRM can be found on the Copyright Office's website at *https://www.copyright.gov/rulemaking/architecturalworks/*.

[2] The Office recently issued a final rule confirming that the Standard Application may be used to register any work under sections 408(a) and 409 of the Copyright Act, including an architectural work. At the same time, the Office confirmed that architectural works may not be registered with the Single Application, which is a streamlined version of the electronic application. 37 CFR 202.3(b)(2)(i)(A), (B). To avoid potential confusion between the Single and Standard Applications, today's final rule removes the word ''single'' wherever it appears in 37 CFR 202.11.

[3] Comments of Reema Mahmoud and Nik Zou.

[4] 17 U.S.C. 408(c)(1).

recognizes that architectural works may be created electronically and then published in a physical form. And the Office recognizes that some digital files may be so big that it may not be possible to upload them to the electronic registration system.[5]

For these reasons, the final rule gives architects the option to register their works either by uploading a digital deposit to the electronic system or by filing an electronic application and mailing the deposit to the Office in a physical form. But if the applicant chooses to submit a digital deposit, that file will be accepted solely for the purpose of registering the architectural work under section 408. Digital deposits will not satisfy the mandatory deposit requirement under section 407. In other words, if an architectural work has been registered with a digital deposit, the Office may issue a demand for a copy of ''the most finished form of presentation drawings'' if that work has been published in the United States and if the Library of Congress determines that the published work is needed for its collections.[6]

List of Subjects in 37 CFR Part 202

Copyright.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office is amending 37 CFR part 202 as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

■ 2. In § 202.3, add a sentence at the end of paragraph (b)(1)(iii) to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(1) * * *

(iii) * * * This class also includes published and unpublished architectural works.

* * * * *

■ 3. Amend § 202.11 as follows:

■ a. Revise paragraphs (a) and (b)(1) and (2);

■ b. Remove paragraph (c)(2) and redesignate paragraph (c)(5) as paragraph (c)(2);

■ c. Revise paragraphs (c)(3) and (4); and

■ d. Add new paragraph (c)(5).

The revisions and additions read as follows:

§ 202.11 Architectural works.

(a) *General.* This section prescribes rules pertaining to the registration of architectural works.

(b) * * *

(1) For the purposes of this section, the term *building* means humanly habitable structures that are intended to be both permanent and stationary, such as houses and office buildings, and other permanent and stationary structures designed for human occupancy, including but not limited to churches, museums, gazebos, and garden pavilions.

(2) Unless otherwise specified, all other terms have the meanings set forth in §§ 202.3 and 202.20.

(c) * * *

(3) *Registration limited to one architectural work.* For published and unpublished architectural works, an application may cover only one architectural work. Multiple architectural works may not be registered using one application. For works such as tract housing, one house model constitutes one work, including all accompanying floor plan options, elevations, and styles that are applicable to that particular model. Where dual copyright claims exist in technical drawings and the architectural work depicted in the drawings, any claims with respect to the technical drawings and architectural work must be registered separately.

(4) *Online application.* (i) The applicant must complete and submit the Standard Application. The application should identify the title of the building. If the architectural work was embodied in unpublished plans or drawings on or before December 1, 1990, and if the building was constructed before January 1, 2003, the application should also provide the date that the construction was completed.

(ii) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (c)(4)(i) of this section, subject to such conditions as the Associate Register and Director of the Office of Registration Policy and Practice may impose on the applicant.

(5) *Deposit requirements.* (i) For designs of constructed or unconstructed buildings, the applicant must submit one complete copy in visually perceptible form of the most finished form of an architectural drawing showing the overall form of the building (*i.e.,* exterior elevations of the building when viewed from the front, rear, and sides), and any interior arrangements of spaces and/or design elements in which copyright is claimed (*i.e.,* walls or other permanent structures that divide the interior into separate rooms and spaces). The deposit should disclose the name(s) of the architect(s) and draftsperson(s) and the building site, if known. For designs of constructed buildings, the applicant also must submit identifying material in the form of photographs complying with § 202.21, which clearly show several exterior and interior views of the architectural work being registered.

(ii) The deposit may be submitted in any form that allows the Copyright Office to access, perceive, and examine the entire copyrightable content of the work being registered, including by uploading the complete copy and identifying material in an acceptable file format to the Office's electronic registration system. Deposits uploaded to the electronic registration system will be considered solely for the purpose of registration under section 408 of title 17 of the United States Code, and will not satisfy the mandatory deposit requirement under section 407 of title 17 of the United States Code.

* * * * *

■ 4. Amend § 202.20 as follows:

■ a. Add paragraph (c)(2)(i)(M); and

■ b. Remove and reserve paragraph (c)(2)(xviii).

The addition reads as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(M) Architectural works, for which the deposit must comply with the requirements set forth in § 202.11.

* * * * *

Dated: April 5, 2019.

Karyn A. Temple,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2019–08136 Filed 4–22–19; 8:45 am]

BILLING CODE 1410–30–P

[5] The current limit is 500 MB for each file that is uploaded to the electronic system. *See Compendium* § 1508.1.

[6] 37 CFR 202.19(d)(2)(viii) (specifying the nature of the deposit required for purposes of mandatory deposit).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0617; FRL–9992–54–Region 4]

Air Plan Approval; GA: Non-Interference Demonstration and Maintenance Plan Revision for Federal Low-Reid Vapor Pressure Requirement in the Atlanta Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision that supports a change to the Federal Reid Vapor Pressure (RVP) requirements in 13 counties in Atlanta, Georgia. They comprise the following counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale (Atlanta fuel volatility Area). The Atlanta fuel volatility Area is a subset of the Atlanta 15-county 2008 8-hour ozone maintenance area. The 15-county 2008 8-hour ozone maintenance area is comprised of the following counties: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale (Atlanta maintenance Area). This approval is based in part on EPA's analysis of whether the SIP revision would interfere with the Atlanta maintenance Area's ability to meet the requirements of the Clean Air Act (CAA or Act). On August 15, 2018, Georgia, through the Georgia Environmental Protection Division (GA EPD), submitted a noninterference demonstration to support its SIP revision requesting that EPA relax the Federal RVP requirements for the Atlanta fuel volatility Area. This SIP revision updates Georgia's 2008 8-hour ozone maintenance plan for the Atlanta maintenance Area and its emissions inventory, the associated motor vehicle emissions budgets (MVEBs), and includes measures to offset the emissions increases expected from the relaxation of the Federal RVP requirements. Georgia's noninterference demonstration concludes that relaxing the Federal RVP requirement from 7.8 pounds per square inch (psi) to 9.0 psi for gasoline sold between June 1 and September 15 of each year in the Atlanta fuel volatility Area would not interfere with attainment or maintenance of any national ambient air quality standards (NAAQS or standards) or with any other CAA requirement. EPA is approving this SIP revision because EPA has determined that the revision is consistent with the applicable provisions of the CAA. EPA will also initiate a separate rulemaking to relax the current Federal requirement to use gasoline that complies with the Federal RVP limit from 7.8 psi to 9.0 psi in the Atlanta fuel volatility Area.

DATES: This rule will be effective May 23, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2018–0617. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dianna Myers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Myers can be reached via telephone at (404) 562–9207 or via electronic mail at *Myers.Dianna@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What is the background for this action?

On November 6, 1991 (56 FR 56694), EPA designated and classified the following counties in and around the Atlanta, Georgia metropolitan area as a Serious ozone nonattainment area for the 1-hour ozone NAAQS: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale. This 13-county 1-hour ozone area is the ''Atlanta fuel volatility Area.'' The nonattainment designation triggered various requirements for the Atlanta 1-hour ozone nonattainment area. One of those requirements for the 1-hour ozone nonattainment area was the Federal 7.8 psi RVP limit for gasoline sold between June 1 and September 15, which is the subject of this action.

EPA issued a final rulemaking action on September 26, 2003, to reclassify or ''bump up,'' the area to a Severe ozone nonattainment area. This reclassification became effective on January 1, 2004 (68 FR 55469). EPA redesignated the Atlanta 1-hour ozone area to attainment, effective June 14, 2005 (70 FR 34660).

On April 30, 2004 (69 FR 23858), EPA designated the following 20 counties in and around metropolitan Atlanta as a Marginal nonattainment area for the 1997 8-hour ozone NAAQS: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton. The Atlanta fuel volatility Area is a sub-set of this 20-county area. Subsequently, EPA reclassified the Atlanta 1997 8-hour ozone nonattainment area as a Moderate nonattainment area on March 6, 2008 (73 FR 12013), because the area failed to attain the 1997 8-hour ozone NAAQS by the required attainment date of June 15, 2007. On December 2, 2013 (78 FR 72040), EPA redesignated the area to attainment for the 1997 8-hour ozone NAAQS.

Effective July 20, 2012, EPA designated the following 15-counties Marginal nonattainment for the 2008 8-hour ozone NAAQS: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale.[1] (77 FR 30088, May 21, 2012, and 77 FR 34221, June 11, 2012). As mentioned before, the Atlanta fuel volatility Area is sub-set of this 15-county area. The 15-county Atlanta 2008 8-hour ozone nonattainment area did not attain the 2008 8-hour ozone NAAQS by the attainment date of July 20, 2015, and therefore on May 4, 2016 (81 FR 26697), EPA published a final rule reclassifying the area from a Marginal nonattainment area to a Moderate nonattainment area for the 2008 8-hour ozone standard. Moderate areas were required to attain the 2008 8-hour ozone NAAQS no later than July

[1] In the proposed rule published on February 12, 2019 (84 FR 3358) on page 3360 Newton was inadvertently left off the list of the 15-counties in the Marginal 2008 8-hour ozone nonattainment area.

20, 2018, which is six years after the effective date of the initial nonattainment designations. *See* 40 CFR 51.1103.

On July 14, 2016 (81 FR 45419), EPA determined that the Atlanta 2008 8-hour ozone nonattainment area attained the 2008 8-hour ozone NAAQS based on complete, quality-assured, and certified ozone monitoring data for years 2013 through 2015. On July 18, 2016, Georgia submitted a 2008 8-hour ozone redesignation request and maintenance plan for the area (hereafter the ''Atlanta maintenance Area''), which EPA approved on June 2, 2017 (82 FR 25523).

On October 1, 2015 (80 FR 65292), EPA revised the 8-hour ozone standard from 0.075 ppm to 0.070 ppm. Subsequently, on June 4, 2018 (83 FR 25776), EPA published a final rule (effective August 3, 2018) designating the following 7 Atlanta counties Marginal nonattainment for the 2015 8-hour ozone NAAQS: Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett and Henry. Areas designated Marginal nonattainment must attain the standard by August 3, 2021.

On August 15, 2018, Georgia submitted a SIP revision to the 2008 8-hour ozone maintenance plan with a CAA section 110(l) noninterference demonstration to support the State's request that EPA relax the Federal RVP requirement from 7.8 psi to 9.0 psi for gasoline sold between June 1 and September 15 of each year (high ozone season) in the Atlanta maintenance Area, which encompasses the smaller Atlanta fuel volatility Area, and the 7-county 2015 8-hour ozone nonattainment area. The demonstration concluded that relaxing the RVP requirement within the Atlanta fuel volatility Area will not interfere with the maintenance or attainment of the NAAQS or with reasonable further progress toward attainment.[2]

The demonstration included an evaluation of the impact that the relaxation of the 7.8 psi RVP requirement would have on Atlanta's ability to maintain the 1997 and 2008 ozone standards. It also evaluates whether the relaxation of the Federal RVP requirement would interfere with the ability of the 7-county 2015 8-hour ozone nonattainment area to attain the ozone standard by August 3, 2021, which is the attainment date for areas classified as Marginal, or with any of the other applicable NAAQS. Although the attainment date is August 3, 2021, Marginal areas must show attainment using air quality data for years 2018 through 2020. Based on modeling data from EPA's Cross State Air Pollution Rule, the entire State of Georgia is showing attainment for the 2015 8-hour ozone NAAQS through 2023.[3]

The demonstration also included two offset measures—school bus replacements and rail locomotive conversions—to obtain the necessary emissions reductions from the small increases in nitrogen oxides (NO_X) and volatile organic compounds (VOC) emissions at the 9.0 psi RVP level. This RVP relaxation will not worsen air quality because Georgia's offsets provided compensating, equivalent emissions reductions to negate the increases in emissions from NO_X and VOC.

Georgia replaced five old school buses (built in 2000–2003) in Paulding County with five 2017 school buses. Also, forty old school buses (built in 1999–2003) in Fulton County were replaced with forty 2017 school buses. The locomotive conversion program consists of two components: (1) The conversion of three older traditional switcher locomotives into newly-available low emissions engine technology from Norfolk Southern Railway, Inc., and (2) Norfolk Southern Railway, Inc.'s conversion of two switchers into ''slugs'' which are driven by electrical motors whose electricity is received from companion ''mother'' locomotives.

The amount of NO_X reductions obtained from the school bus replacements and locomotive conversions were more than what is needed to compensate for the small amount of NO_X and VOC increases associated with relaxing the Federal gasoline RVP limit from 7.8 psi to 9.0 psi. The SIP revision also included an update to the mobile emissions inventory and associated 2030 MVEBs due to the relaxation. The on-road emissions inventory and safety margin allocation for the year 2030 were updated but the MVEB totals themselves remained unchanged. *See* Table 1 below.

TABLE 1—UPDATED MVEBS FOR THE 15-COUNTY ATLANTA MAINTENANCE AREA IN TONS PER DAY (tpd)

	2014[4]		2030	
	NO_X	VOC	NO_X	VOC
On-Road Emissions	170.15	81.76	39.63	36.01
Safety Margin Allocation[5]	.....	.....	18.37	15.99
MVEBs with Safety Margin	170.15	81.76	58	52

In a notice of proposed rulemaking (NPRM) published on February 12, 2019 (84 FR 3358), EPA proposed to approve the August 15, 2018, SIP revision. The details of Georgia's submittal and the rationale for EPA's actions are explained in the NPRM.

II. Response to Comments

EPA received one comment from the Society of Independent Gasoline Marketers of America (SIGMA).

Comment: SIGMA expressed support for the approval of the SIP revision while also expressing concerns over the compliance date for the future rulemaking that would relax the Federal RVP standard for gasoline from 7.8 psi to 9.0 psi in the 13-county Area. Specifically, SIGMA stated that a compliance date that is either too close to the start or in the middle of the 2019 summer fuel season would inject

[2] While this final rule focuses on ozone, which is the pollutant most likely to be impacted by the proposed revision, the demonstration provided information that the relaxation would have little to no impact on particulate matter (PM), sulfur dioxide (SO_2), nitrogen dioxide (NO_2), carbon monoxide (CO), lead (Pb), and related precursors.

[3] *See* the Peter Tsirigotis Memorandum dated October 19, 2018, entitled ''Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards.'' *See also https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs.*

[4] The 2014 on-road emissions and MVEBs in this chart are shown for illustration purposes because no changes were made to the 2014 attainment year emissions inventory due to the relaxation.

[5] The safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The transportation conformity rule provides for establishing safety margins for use in transportation conformity determinations. *See* 40 CFR 93.124(a).

significant disruption into the fuel marketplace.

Response: SIGMA's comment on the compliance date for the future RVP relaxation rulemaking is outside of the scope of the approval of this SIP revision, which updates Georgia's 2008 8-hour ozone maintenance plan for the Atlanta maintenance Area and adds measures to offset emissions increases expected from the relaxation of the Federal RVP standard. As explained at proposal, EPA intends to engage in a notice and comment rulemaking that would relax the Federal RVP standard in the 13-county area from 7.8 psi to 9.0 psi (84 FR 3358). SIGMA is encouraged to submit this comment when EPA proposes any such rule.

III. Final Action

EPA is taking final action to approve Georgia's August 15, 2019, SIP revision, including the section 110(l) noninterference demonstration supporting the change of 7.8 psi to 9.0 psi RVP requirements in the Atlanta fuel volatility Area, which is a subset of the Atlanta maintenance Area. The SIP revision updates Georgia's 2008 8-hour ozone maintenance plan for the Atlanta maintenance Area, its emissions inventory, the MVEBs, and it includes measures to offset the emissions increases expected from the relaxation of the Federal RVP requirements. Georgia's noninterference demonstration concludes that relaxing the Federal RVP requirement from 7.8 psi to 9.0 psi for gasoline sold between June 1 and September 15 of each year in the Atlanta fuel volatility Area would not interfere with attainment or maintenance of any NAAQS or with any other CAA requirement. EPA is approving this SIP revision because EPA has determined that the revision is consistent with the CAA.

Through this action, EPA is not removing the Federal 7.8 psi RVP requirement for the Atlanta fuel volatility Area. Any such action would occur in a separate rulemaking.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 24, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 11, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

Title 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

■ 2. Section 52.570(e), is amended by adding an entry for ''Non-Interference Demonstration and Maintenance Plan Revision for Federal Low-Reid Vapor Pressure Requirement in the Atlanta Area'' at the end of the table to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
* *	* *	*	*	*
Non-Interference Demonstration and Maintenance Plan Revision for Federal Low-Reid Vapor Pressure Requirement in the Atlanta Area.	Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale counties.	8/15/2018	4/23/2019, [Insert **Federal Register** citation].	

[FR Doc. 2019–08062 Filed 4–22–19; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0593; FRL–9991–86]

Bacteriophage Active Against Xylella fastidiosa; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of lytic bacteriophage active against *Xylella fastidiosa* in or on all food commodities when the bacteriophage are sequenced and have sequences free of toxins and lysogenic genes and are used in accordance with label directions and good agricultural practices. Otsuka Pharmaceutical Co., Ltd. (c/o Technology Sciences Group Inc.) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of bacteriophage active against *Xylella fastidiosa* in or on all food commodities under FFDCA.

DATES: This regulation is effective April 23, 2019. Objections and requests for hearings must be received on or before June 24, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0593, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0593 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 24, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0593, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html*. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is

available at *http://www.epa.gov/dockets*.

II. Background

In the **Federal Register** of March 6, 2018 (83 FR 9471) (FRL–9973–27), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7F8562) by Otsuka Pharmaceutical Co., Ltd. (Otsuka), 2–9 Kanda-Tsukasamachi, Chiyoda-ku, Tokyo, 101–8535, Japan (c/o Technology Sciences Group Inc., 712 Fifth St., Suite A, Davis, CA 95616). The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the bactericide bacteriophages active against *Xylella fastidiosa* in or on all food commodities. That document referenced a summary of the petition prepared by the petitioner Otsuka (c/o Technology Sciences Group Inc.) and available in the docket via *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit III.C.

Based upon review of data and other information supporting the petition, EPA is granting a tolerance exemption that differs slightly from what the petition requested. The reason for this difference is explained in Unit III.D.

III. Final Rule

A. EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.''

EPA evaluated the available toxicity and exposure data on bacteriophage active against *Xylella fastidiosa* and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Safety Determination for Bacteriophage Active Against *Xylella fastidiosa*'' (Safety Determination). This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

The available data demonstrated that, with regard to humans, bacteriophage active against *Xylella fastidiosa* are not anticipated to be toxic, pathogenic, or infective via any route of exposure. Furthermore, humans, including infants and children, have been exposed to bacteriophage through food and water, where they are commonly found, with no known adverse effects. Although there may be some exposure to residues when bacteriophage active against *Xylella fastidiosa* is used on food commodities in accordance with label directions and good agricultural practices (only grape for now), there is a lack of concern due to the lack of potential for adverse effects. EPA also determined in the Safety Determination that retention of the Food Quality Protection Act (FQPA) safety factor was not necessary as part of the qualitative assessment conducted for bacteriophage active against *Xylella fastidiosa*.

Based upon its evaluation in the Safety Determination, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of bacteriophage active against *Xylella fastidiosa*. Therefore, an exemption from the requirement of a tolerance is established for residues of lytic bacteriophage active against *Xylella fastidiosa* in or on all food commodities when the bacteriophage are sequenced and have sequences free of toxins and lysogenic genes and are used in accordance with label directions and good agricultural practices.

B. Analytical Enforcement Methodology

An analytical method is not required because EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Response to Comments

Nine comments were received in response to the notice of filing. EPA reviewed the comments and determined that they are irrelevant to the tolerance exemption in this action.

D. Differences Between Petition and Tolerance Exemption Rule

In its petition, the petitioner requested generally that EPA issue an exemption from the requirement of a tolerance for residues of bacteriophage active against *Xylella fastidiosa* in or on all food commodities. The petitioner's supporting materials indicated that the actual pesticide that would be used would be safe because the bacteriophage were lytic and were sequenced and have sequences free of toxins and lysogenic genes. EPA believes that only bacteriophage that have these same characteristics as the organism tested would be safe and should be exempt from the requirement of a tolerance. Therefore, EPA is issuing a tolerance exemption that differs slightly from the petition by limiting the exemption to residues of the bacteriophage that possess the same characteristics as the bacteriophage that were tested to support this exemption.

IV. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 44

U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note).

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 12, 2019.

Richard P. Keigwin, Jr.,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.1365 to subpart D to read as follows:

§ 180.1365 Bacteriophage active against *Xylella fastidiosa;* exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of lytic bacteriophage active against *Xylella fastidiosa* in or on all food commodities when the bacteriophage are sequenced and have sequences free of toxins and lysogenic genes and are used in accordance with label directions and good agricultural practices.

[FR Doc. 2019–08111 Filed 4–22–19; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

RIN 3145–AA59

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation.

ACTION: Direct final rule.

SUMMARY: Pursuant to the Antarctic Conservation Act of 1978, as amended, the National Science Foundation (NSF) is amending its regulations to reflect changes to designated Antarctic specially protected areas (ASPA), Antarctic specially managed areas (ASMA) and historic sites or monuments (HSM). These changes reflect decisions already adopted by the Antarctic Treaty Parties at recent Antarctic Treaty Consultative Meetings (ATCM). The United States Department of State heads the United States delegation to these annual Antarctic Treaty meetings.

DATES: Effective April 23, 2019.

FOR FURTHER INFORMATION CONTACT: Bijan Gilanshah, Assistant General Counsel, Office of the General Counsel, at 703–292–8060, National Science Foundation, 2415 Eisenhower Avenue, Suite W 18200, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION: The Antarctic Conservation Act of 1978, as amended (''ACA'') (16 U.S.C. 2401, *et seq.*) implements the Protocol on Environmental Protection to the Antarctic Treaty (''the Protocol''). Annex V contains provisions for the protection of specially designated areas specially managed areas and historic sites and monuments. Section 2405 of title 16 of the ACA directs the Director of the National Science Foundation to issue such regulations as are necessary and appropriate to implement Annex V to the Protocol.

The Antarctic Treaty Parties, which includes the United States, periodically adopt measures to establish, consolidate or revoke specially protected areas, specially managed areas and historical sites or monuments in Antarctica. This rule is being revised to reflect five added Antarctic specially protected areas (ASPAs 171–175) and six historical sites and monuments in Antarctica (HSM 87–92). The rule is also being revised to reflect the revocation, of three Antarctic specially protected areas (ASPAs 114, 118 and 130) and one Antarctic specially managed area (ASMA 3) primarily due to consolidation.

Public Participation

The changes to these areas and sites reflect decisions already made by the Antarctic Treaty Parties at recent international ATOM meetings. Because these amendments directly involve a foreign affairs function, the provisions of Executive Order 12866, Executive Order 13771 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Further, because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601 and 612) does not apply.

Environmental Impact

This final rule makes technical conforming changes to the National Science Foundation's regulations to reflect the substantive outcomes of recent Antarctic Treaty Consultative Meetings. The actions taken by the Antarctic Treaty Parties to manage and protect these new Antarctic areas and historic resources will result in added protection of the Antarctic environment and its historic resources.

Reducing Regulation and Controlling Regulatory Costs

In implementing these international ATOM agreed to changes, this direct final rule relates to a foreign affairs

function of the United States. Accordingly, NSF has determined that this document is not a regulation or rule subject to either Executive Order 12866 or Executive Order 13771. Further, under section 5 of Executive Order 13777, an agency may receive a waiver from some or all of the requirements of Executive Order 13777 if the Director of the Office of Management and Budget determines that the agency generally issues very few or no regulations. The National Science Foundation received such a waiver from the requirements of Executive Order 13777.

No Takings Implications

The Foundation has determined that the final rule will not involve the taking of private property pursuant to E.O. 12630.

Civil Justice Reform

The Foundation has considered this final rule under E.O. 12988 on civil justice reform and determined the principles underlying and requirements of E.O. 12988 are not implicated.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Foundation has considered this final rule under the requirements of E.O. 13132 on federalism and has determined that the final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Foundation has determined that no further assessment of federalism implications is necessary.

Moreover, the Foundation has determined that promulgation of this final rule does not require advance consultation with Indian Tribal officials as set forth in E.O. 13175, Consultation and Coordination with Indian Tribal Governments.

Energy Effects

The Foundation has reviewed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Foundation has determined that this final rule does not constitute a significant energy action as defined in the E.O.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Foundation has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule will not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 45 CFR Part 670

Administrative practice and procedure, Antarctica, Exports, Imports, Plants, Reporting and recordkeeping requirements, Wildlife.

Pursuant to the authority granted by 16 U.S.C. 2405(a)(1), NSF hereby amends 45 CFR part 670 as set forth below:

PART 670—[AMENDED]

■ 1. The authority citation for part 670 continues to read as follows:

Authority: 16 U.S.C. 2405, as amended.

■ 2. Section 670.29 is revised to read as follows:

§ 670.29 Designation of Antarctic Specially Protected Areas, Specially Managed Areas, and Historic Sites and Monuments.

(a) The following areas have been designated by the Antarctic Treaty Parties for special protection and are hereby designated as Antarctic specially protected areas (ASPA). The Antarctic Conservation Act of 1978, as amended, prohibits, unless authorized by a permit, any person from entering or engaging in activities within an ASPA. Detailed maps and descriptions of the sites and complete management plans can be obtained from the National Science Foundation, Office of Polar Programs, National Science Foundation, Room 755, 4201 Wilson Boulevard, Arlington, Virginia 22230.

ASPA 101 Taylor Rookery, Mac. Robertson Land
ASPA 102 Rookery Islands, Holme Bay, Mac. Robertson Land
ASPA 103 Ardery Island and Odbert Island, Budd Coast, Wilkes Land
ASPA 104 Sabrina Island, Northern Ross Sea, Antarctica
ASPA 105 Beaufort Island, McMurdo Sound, Ross Sea
ASPA 106 Cape Hallett, Northern Victoria Land, Ross Sea
ASPA 107 Emperor Island, Dion Islands, Marguerite Bay, Antarctic Peninsula
ASPA 108 Green Island, Berthelot Islands, Antarctic Peninsula
ASPA 109 Moe Island, South Orkney Islands
ASPA 110 Lynch Island, South Orkney Islands
ASPA 111 Southern Powell Island and adjacent islands, South Orkney Islands
ASPA 112 Coppermine Peninsula, Robert Island, South Shetland Islands
ASPA 113 Litchfield Island, Arthur Harbour, Anvers Island, Palmer Archipelago
ASPA 115 Lagotellerie Island, Marguerite Bay, Graham Land
ASPA 116 New College Valley, Caughley Beach, Cape Bird, Ross Island
ASPA 117 Avian Island, Marguerite Bay, Antarctic Peninsula
ASPA 119 Davis Valley and Forlidas Pond, Dufek Massif, Pensacola Mountains
ASPA 120 Pointe-Geologie Archipelego, Terre Adelie
ASPA 121 Cape Royds, Ross Island
ASPA 122 Arrival Heights, Hut Point Peninsula, Ross Island
ASPA 123 Barwick and Balham Valleys, Southern Victoria Land
ASPA 124 Cape Crozier, Ross Island
ASPA 125 Fildes Peninsula, King George Island (25 de Mayo)
ASPA 126 Byers Peninsula, Livingston Island, South Shetland Islands
ASPA 127 Haswell Island
ASPA 128 Western shore of Admiralty Bay, King George Island, South Shetland Islands
ASPA 129 Rdthera Point, Adelaide Island
ASPA 131 Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land
ASPA 132 Potter Peninsula, King George Island (Isla 25 de Mayo) (South Shetland Islands)
ASPA 133 Harmony Point, Nelson Island, South Shetland Islands
ASPA 134 Cierva Point and offshore islands, Danco Coast, Antarctic Peninsula
ASPA 135 North-eastern Bailey Peninsula, Budd Coast, Wilkes Land
ASPA 136 Clark Peninsula, Budd Coast, Wilkes Land
ASPA 137 North-west White Island, McMurdo Sound
ASPA 138 Linnaeus Terrace, Asgard Range, Victoria Land

ASPA 139 Biscoe Point, Anvers Island, Palmer Archipelago
ASPA 140 Parts of Deception Island, South Shetland Islands
ASPA 141 Yukidori Valley, Langhovde, Lutzow-Holm Bay
ASPA 142 Svarthamaren
ASPA 143 Marine Plain, Mule Peninsula, Vestfold Hills, Princess Elizabeth Land
ASPA 144 Chile Bay (Discovery Bay), Greenwich Island, South Shetland Islands
ASPA 145 Port Foster, Deception Island, South Shetland Islands
ASPA 146 South Bay, Doumer Island, Palmer Archipelago
ASPA 147 Ablation Valley and Ganymede Heights, Alexander Island
ASPA 148 Mount Flora, Hope Bay, Antarctic Peninsula
ASPA 149 Cape Shirreff and San Telmo Island, Livingston Island, South Shetland Islands
ASPA 150 Ardley Island, Maxwell Bay, King George Island (25 de Mayo)
ASPA 151 Lions Rump, King George Island, South Shetland Islands
ASPA 152 Western Bransfield Strait
ASPA 153 Eastern Dallmann Bay
ASPA 154 Botany Bay, Cape Geology, Victoria Land
ASPA 155 Cape Evans, Ross Island
ASPA 156 Lewis Bay, Mount Erebus, Ross Island
ASPA 157 Backdoor Bay, Cape Royds, Ross Island
ASPA 158 Hut Point, Ross Island
ASPA 159 Cape Adare, Borchgrevink Coast
ASPA 160 Frazier Islands, Windmill Islands, Wilkes Land, East Antarctica
ASPA 161 Terra Nova Bay, Ross Sea
ASPA 162 Mawson's Huts, Cape Denison, Commonwealth Bay, George V Land, East Antarctica
ASPA 163 Dakshin Gangotri Glacier, Dronning Maud Land
ASPA 164 Scullin and Murray Monoliths, Mac. Robertson Land
ASPA 165 Edmonson Point, Wood Bay, Ross Sea
ASPA 166 Port-Martin, Terre Adelie
ASPA 167 Hawker Island, Vestfold Hills, Ingrid Christensen Coast, Princess Elizabeth Land, East Antarctica
ASPA 168 Mount Harding, Grove Mountains, East Antarctica
ASPA 169 Amanda Bay, Ingrid Christensen Coast, Princess Elizabeth Land, East Antarctica
ASPA 170 Marion Nunataks, Charcot Island, Antarctic Peninsula
ASPA 171 Narebski Point, Barton Peninsula, King George Island
ASPA 172 Lower Taylor Glacier and Blood Falls, Taylor Vallye, McMurdo Dry Valleys, Victoria Land
ASPA 173 Cape Washington and Silverfish Bay, Terra Nova Bay, Ross Sea
ASPA 174 Stornes, Larsemann Hills, Princess Elizabeth Land
ASPA 175 High Altitude Geothermal sites of the Ross Sea Region

(b) The following areas have been designated by the Antarctic Treaty Parties for special management and have been designated as Antarctic specially managed areas (ASMA). Detailed maps and descriptions of the sites and complete management plans can be obtained from the National Science Foundation, Office of Polar Programs, Room 755, 4201 Wilson Boulevard, Arlington, Virginia 22230.

ASMA 1 Admiralty Bay, King George Island
ASMA 2 McMurdo Dry Valleys, Southern Victoria Land
ASMA 4 Deception Island
ASMA 5 Amundsen-Scott South Pole Station, South Pole
ASMA 6 Larsemann Hills, East Antarctica
ASMA 7 Southwest Anvers Island and Palmer Basin

(c) The following areas have been designated by the Antarctic Treaty Parties as historic sites or monuments (HSM). The Antarctic Conservation Act of 1978, as amended, prohibits any damage, removal or destruction of a historic site or monument listed pursuant to Annex V to the Protocol. Descriptions of the sites or monuments can be obtained from the National Science Foundation, Office of Polar Programs, Room 755, 4201 Wilson Boulevard, Arlington, Virginia 22230.

HSM 1 Flag mast erected in December 1965 at South Geographical Pole by the First Argentine Overland Polar Expedition.

HSM 2 Rock cairn and plaques erected in January 1961 at Syowa Station in memory of Shun Fukushima.

HSM 3 Rock cairn and plaque erected in January 1930 by Sir Douglas Mawson on Proclamation Island, Enderby Land.

HSM 4 Station building to which a bust of V.I. Lenin is fixed together with a plaque in memory of the conquest of the Pole of Inaccessibility, by Soviet Antarctic Explorers in 1958.

HSM 5 Rock cairn and plaque at Cape Bruce, Mac. Robertson Land, erected in February 1931 by Sir Douglas Mawson.

HSM 6 Rock cairn and canister at Walkabout Rocks, Vestfold Hills, Princess Elizabeth Land, erected in 1939 by Sir Hubert Wilkins.

HSM 7 Stone with inscribed plaque, erected at Mirny Observatory, Mabus Point, in memory of driver-mechanic Ivan Kharma.

HSM 8 Metal Monument sledge and plaque at Mirny Observatory, Mabus Point, in memory of driver-mechanic Anatoly Shcheglov.

HSM 9 Cemetery on Buromskiy Island, near Mirny Observatory.

HSM 10 Building (Magnetic Observatory) at Dobrowolsky Station, Hunger Hills, with plaque in memory of the opening of Oasis Station in 1956.

HSM 11 Heavy Tractor at Vostock Station with plaque in memory of the opening of the Station in 1957.

HSM 14 Site of ice cave at Inexpressible Island, Terra Nova Bay, constructed in March 1912 by Victor Campbell's Northern Party.

HSM 15 Hut at Cape Royds, Ross Island, built in February 1908 by the British Antarctic Expedition.

HSM 16 Hut at Cape Evans, Ross Island, built in January 1911 by the British Antarctic Expedition.

HSM 17 Cross on Wind Vane Hill, Cape Evans, Ross Island, erected by the Ross Sea Party in memory of three members of the party who died in the vicinity in 1916.

HSM 18 Hut at Hut Point, Ross Island, built in February 1902 by the British Antarctic Expedition.

HSM 19 Cross at Hut Point, Ross Island, erected in February 1904 by the British Antarctic Expedition in memory of George Vince.

HSM 20 Cross on Observation Hill, Ross Island, erected in January 1913 in by the British Antarctic Expedition in memory of Captain Robert F Scott's party which perished on the return journey from the South Pole.

HSM 21 Remains of stone hut at Cape Crozier, Ross Island, constructed in July 1911 by the British Antarctic Expedition.

HSM 22 Three huts and associated relics at Cape Adare Two built in February 1899 the third was built in February 2011 all by the British Antarctic Expedition.

HSM 23 Grave at Cape Adare of Norwegian biologist Nicolai Hanson.

HSM 24 Rock cairn, known as ''Amundsen's cairn,'' at Mount Betty, Queen Maud Range erected by Roald Amundsen in January 1912.

HSM 26 Abandoned installations of Argentine Station ''General San Martin'' on Barry Island, Debenham Islands, Marguerite Bay, Antarctic Peninsula.

HSM 27 Cairn with a replica of a lead plaque erected at Megalestris Hill, Petermann Island in 1909 by the second French expedition.

HSM 28 Rock Cairn at Port Charcot, Booth Island, with wooden pillar and plaque.

HSM 29 Lighthouse named ''Primero de Mayo'' erected on Lambda Island, Melchior Islands, by Argentina in 1942.

HSM 30 Shelter at Paradise Harbour erected in 1950.

HSM 32 Concrete Monolith erected in 1947 near Capitan Arturo Prat Base on Greenwich Island, South Shetland Islands.

HSM 33 Shelter and cross with plaque near Capitan Arturo Prat Base Greenwich Island, South Shetland Islands.

HSM 34 Bust at Capitan Arturo Prat base Greenwich Island, South Shetland Islands, of Chilean naval hero Arturo Prat.

HSM 35 Wooden cross and statue of the Virgin of Carmen erected in 1947 near Capitan Arturo Prat base Greenwich Island, South Shetland Islands.

HSM 36 Replica of a metal plaque erected by Eduard Dallman at Potter Cove, King George Island, South Shetland Islands.

HSM 37 Statue erected in 1948 at General Hernando O'Higgins Base (Chile) Trinity Peninsula.

HSM 38 Wooden hut on Snow Hill Island built in February 1902 by the Swedish South Polar Expedition.

HSM 39 Stone hut at Hope Bay, Trinity Peninsula built in January 1903 by the Swedish South Polar Expedition.

HSM 40 Bust of General San Martin, grotto with statue of the Virgin Lujan, a flag mast and graveyard at Base Esperanza, Hope Bay Trinity Peninsula, erected by Argentina in 1955.

HSM 41 Stone hut and grave at Paulet Island built in 1903 by members of the Swedish South Polar Expedition.

HSM 42 Area of Scotia bay, Laurie Island, South Orkney containing stone huts built in 1903 by the Scottish Antarctic Expedition, Argentine meteorological hut and magnetic observatory (Moneta house) and graveyard.

HSM 43 Cross erected in 1955 and subsequently moved to Belgrano II Station, Nunatak Bertrab, Confin Coast, Coats Land in 1979.

HSM 44 Plaque erected at temporary Indian Station ''Dakshin Gangotri,'' Princess Astrid Kyst, Droning Maud Land, listing the names of the first Indian Antarctic Expedition.

HSM 45 Plaque on Brabant Island, on Metchnikoff Point, at a height of 70m on the crest of the moraine separating this point from the glacier and bearing an inscription.

HSM 46 All of the buildings and installations of Port-Martin Base, Terre Adelie, constructed in 1950 by the 3rd French expedition in Terre Adelie.

HSM 47 Wooden building called ''Base Marret'' on the Ile des Petrels, Terre Adelie.

HSM 48 Iron Cross on the North-East headland of the Ile des Petrels, Terre Adelie.

HSM 49 Concrete pillar erected by the First Polish Antarctic Expedition at Dobrowski Station on Bunger Hill in January 1959, to measure acceleration due to gravity.

HSM 50 Brass Plaque bearing the Polish Eagle at Fildes Peninsula, King George Island, South Shetland Islands.

HSM 51 Grave of Wlodzimierz Puchalski, surmounted by an iron cross south of Arctowski station on King George Island, South Shetland Islands.

HSM 52 Monolith commemorating the establishment on 20 February 1965 of the ''Great Wall Station'' on Fildes Peninsula, King George Island, South Shetland Islands.

HSM 53 Bust of Captain Luis Alberto Pardo, monolith and plaques on Point Wild, Elephant Island, South Shetland Islands.

HSM 54 Richard E. Byrd Historic Monument, a bronze bust at McMurdo Station.

HSM 55 East Base, Antarctica, Stonington Island (Buildings and artifacts) erected by the Antarctic Service Expedition (1939–1941) and the Ronne Antarctic Research Expedition (1947–1948).

HSM 56 Waterboat Point, Danco Coast, (remains of hut and environs).

HSM 57 Plaque at ''Yankee Bay'' (Yankee Harbour), MacFarlane Strait, Greenwich Island, South Shetland Islands.

HSM 59 Cairn on Half Moon Beach, Cape Shirreff, Livingston Island, South Shetland Islands and a Plaque on 'Cerro Gaviota' opposite San Telmo Islets.

HSM 60 Wooden plaque and cairn placed in November 1903 at ''Penguins Bay,'' Seymour Island (Marambio), James Ross Archipelago.

HSM 61 ''Base A'' at Port Lockroy, Goudier Island, off Wiencke Island.

HSM 62 ''Base F'' (Wordie House)' on Winter Island, Argentine Islands.

HSM 63 ''Base Y'' on Horseshoe Island, Marguerite Bay, western Graham Land.

HSM 64 ''Base E'' on Stonington Island, Marguerite Bay, western Graham Land.

HSM 65 Message post erected in January 1895 on Svend Foyn Island, Possession Islands.

HSM 66 Prestrud's cairn, Scott Nunataks, Alexandra Mountains, Edward VII Peninsula erected in December 1911.

HSM 67 Rock shelter known as ''Granite House,'' erected in 1911 at Cape Geology, Granite Harbour.

HSM 68 Site of depot at Hells Gate Moraine, Inexpressible Island, Terra Nova Bay.

HSM 69 Message post at Cape Crozier, Ross Island, erected January 1902 by Capt. Robert F. Scott's Discovery Expedition.

HSM 70 Message post at Cape Wadworth, Coulman Island, erected January 1902 by Capt. Robert F. Scott.

HSM 71 Whalers Bay, Deception Island, South Shetland Islands (includes whaling artifacts).

HSM 72 Mikkelsen Cairn, Tryne Islands, Vestfold Hills.

HSM 73 Memorial Cross for the 1979 Mount Erebus crash victims, erected in January 1987 at Lewis Bay, Ross Island.

HSM 74 Unnamed cove on the south-west coast of Elephant Island, South Shetland Islands, including the foreshore and intertidal area, in which the wreckage of a large wooden sailing vessel is located.

HSM 75 ''A Hut'' of Scott base, Pram Point, Ross Island.

HSM 76 Ruins of base Pedro Aguirre Cerda, Pendulum Cove, Deception Island, South Shetland Islands.

HSM 77 Cape Denison, Commonwealth Bay, George V Land, including Boat Harbour and the historic artifacts contained within its waters.

HSM 78 Memorial Plaque at India Point, Humboldt Mountains, Wohlthat Massif, central Dronning Maud Land.

HSM 79 Lillie Marleen Hut, Mt. Dockery, Everett Range, Northern Victoria Land.

HSM 80 Amundsen's Tent erected in December 1911 at the South Pole.

HSM 81 Rocher du Debarguement (Landing Rock).

HSM 82 Monument to the Antarctic Treaty and Plaques, Fildes Peninsula, King George Island, South Shetland Islands.

HSM 83 Base ''W'' established in 1956 at Detaille Island, Lallemande Fjord, Loubert Coast .

HSM 84 Hut at erected in 1973 at Damoy Point, Dorian Bay, Wiencke Island, Palmer Archipelago.

HSM 85 Plaque Commemorating the PM–3A Nuclear Power Plant at McMurdo Station.

HSM 86 No.1 Building Commemorating China's Antarctic Expedition at Great Wall Station.

HSM 87 Location of the first permanently occupied German Antarctic research station ''Georg Forster'' at the Schirmacher Oasis, Dronning Maud Land.

HSM 88 Professor Kudryashov's Drilling Complex Building, Vostok Station.

HSM 89 Terra Nova Expedition 1910–12, Upper ''Summit Camp'', Mount Erebus.

HSM 90 Terra Nova Expedition 1910–12, Lower ''Camp E'' Site, Mount Erebus.

HSM 91 Lame Dog Hut at the Bulgarian base St. Kliment Ohridski, Livingston Island.

HSM 92 Oversnow heavy tractor ''Kharkovchanka'' that was used in Antarctica from 1959 to 2010.

Dated: April 9, 2019.

Lawrence Rudolph,

General Counsel.

[FR Doc. 2019–08024 Filed 4–22–19; 8:45 am]

BILLING CODE 7555–01–M

Proposed Rules

Federal Register
Vol. 84, No. 78
Tuesday, April 23, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AE97

Compensation in Connection With Loans to Members and Lines of Credit to Members

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The NCUA Board (Board) is issuing this advance notice of proposed rulemaking (ANPR) to solicit comments on ways to improve the agency's regulations limiting a credit union official's and employee's compensation in connection with loans to members and lines of credit to members. These regulations have generated confusion and are likely outdated, burdensome, and at odds with industry standards. The Board is particularly interested in obtaining commenter feedback on how it can provide flexibility with respect to senior executive compensation plans that incorporate lending as part of a broad and balanced set of organizational goals and performance measures.

DATES: Comments must be received on or before June 24, 2019.

ADDRESSES: You may submit written comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *NCUA website: https://www.ncua.gov/regulation-supervision/rules-regulations/proposed-pending-and-recently-final-regulations*. Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov*. Include ''[Your name]—Comments on Advance Notice of Proposed Rulemaking: Compensation in Connection with Loans to Members and Lines of Credit to Members'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You can view all public comments on the NCUA's website at *https://www.ncua.gov/regulation-supervision/rules-regulations/proposed-pending-and-recently-final-regulations* as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in the NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518–6546, or send an email to *OGCMail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas I. Zells, Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 548–2478.

SUPPLEMENTARY INFORMATION:

I. Background

In August 2017,[1] the Board published and sought comment on the NCUA Regulatory Reform Task Force's (Task Force) first report on implementing the agency's regulatory reform agenda (Agenda). The Agenda identifies those regulations the Board intends to amend or repeal because they are outdated, ineffective, or excessively burdensome.[2] The Board published the Task Force's second and final report in December 2018.[3] The final report contains the Task Force's updated recommendations and a refined blueprint for implementing the Agenda.

One of the Agenda's recommendations specifically suggested that the Board modify its regulations to ''provide flexibility with respect to senior executive compensation plans that incorporate lending as part of a broad and balanced set of organizational goals and performance measures.'' The Board recognizes that the NCUA's regulations in this area, which were last updated over 20 years ago, are likely outdated, burdensome, and at odds with industry standards for senior executive compensation plans.[4] As such, the Board is seeking comment on how to update the regulations so that credit unions can offer competitive compensation plans without encouraging inappropriate risks, incentivizing bad loans, or negatively effecting safety and soundness. While the Board is particularly interested in how the agency can update its regulations to provide flexibility with respect to senior executive compensation plans, it would also like comments on how the regulations governing compensation associated with lending can be modernized generally.

II. Current Standards and Request for Comment

Currently, § 701.21(c)(8)(i) of the NCUA's regulations establishes a blanket prohibition on the direct or indirect receipt of any commission, fee, or other compensation by any credit union official or employee, or an immediate family member of either, in connection with any loan made by their credit union.[5] However, § 701.21(c)(8)(iii) carves out four exceptions to this blanket prohibition. Specifically, § 701.21(c)(8)(iii) permits:

(A) Payment, by a federal credit union, of salary to employees;

(B) Payment, by a federal credit union, of an incentive or bonus to an employee based on the credit union's overall financial performance;

(C) Payment, by a federal credit union, of an incentive or bonus to an employee, other than a senior management employee, in connection with a loan or loans made by the credit union, provided that the board of directors of the credit union establishes written policies and internal controls in

[1] 82 FR 39702 (Aug. 22, 2017).

[2] This is consistent with the spirit of the President's regulatory reform agenda and Executive Order 13777. Although the NCUA, as an independent agency, is not required to comply with Executive Order 13777, the Board chose to comply with it in spirit and reviewed all of the NCUA's regulations to that end.

[3] 83 FR 65926 (Dec. 21, 2018).

[4] 60 FR 51886 (Oct. 4, 1995).

[5] 12 CFR 701.21(c)(8)(i).

connection with such incentive or bonus and monitors compliance with such policies and controls at least annually; and

(D) Receipt of compensation from a person outside a federal credit union by a volunteer official or non-senior-management employee of the credit union, or an immediate family member of a volunteer official or employee of the credit union, for a service or activity performed outside the credit union, provided that no referral has been made by the credit union or the official, employee, or family member.

In the past, credit unions have been confused about how to interpret the term ''overall financial performance'' in § 701.21(c)(8)(iii)(B). As noted, § 701.21(c)(8) generally prohibits most credit union employees and officials from receiving compensation made ''in connection with any loan'' a credit union makes, but provides exceptions, including one that permits incentive compensation to employees based on the credit union's overall financial performance. Credit unions have expressed uncertainly about whether the NCUA permits loan metrics such as aggregate loan growth to be a factor in assessing overall financial performance. They also have asserted that the regulation is subject to varying interpretations and levels of enforcement across the NCUA's regions.

Given the degree of confusion and uncertainty this regulation has caused, the Board seeks comment as to how the NCUA should modernize its regulations generally governing the compensation of credit union officials and employees in connection with loans made by credit unions and specifically with respect to defining ''overall financial performance.'' In addition, the Board specifically requests feedback addressing the following:

- Is there a single industry standard or methodology for developing executive compensation plans? Are there multiple standards or methodologies for credit unions of different asset sizes?
- Are the terms and conditions of executive compensation plans developed by credit unions themselves or are the plans crafted by third-party vendors?
- What do these plans look like? Are there specific formulas employed to determine terms and conditions? If so, what are the formulas?
- Is the current structure of § 701.21(c)(8), namely a broad prohibition with specific exceptions, the best format for regulating this area?
- Do commenters prefer a bright line test for permissible compensation to regulations that make a more holistic evaluation of individual compensation plans and the incentives they provide? Is a bright line test even possible in this highly fact determinative area? If so, where is that line?
- Are current credit union compensation plans similar to, and competitive with, those provided at other financial institutions? If not, how do they differ and what, if anything, in the NCUA's regulations contributes to those differences?
- What limitations, if any, are necessary to prevent individuals from being incentivized to take inappropriate risks that endanger their credit unions? What authorities do credit unions need to enable them to compete for talented executives?
- To what extent should the NCUA permit loan metrics, such as loan volume, to be a part of compensation plans? How would those metrics be incorporated into the overall plan?
- Should the NCUA provide additional requirements for compensation related to a line of business that is new for the credit union or one in which the credit union lacks substantial experience or expertise?

III. Legal Authority

The Board has issued this ANPR pursuant to its authority under the Federal Credit Union Act (FCU Act). Under the FCU Act, the NCUA is the chartering and supervisory authority for federal credit unions and the federal supervisory authority for federally insured credit unions (FICUs).[6] The FCU Act grants NCUA a broad mandate to issue regulations governing both federal credit unions and all FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.[7] Section 207 of the FCU Act is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.[8] Section 209 of the FCU Act is a plenary grant of regulatory authority to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[9] Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

[6] 12 U.S.C. 1752–1775.
[7] 12 U.S.C. 1766(a).
[8] 12 U.S.C. 1787.
[9] 12 U.S.C. 1789.

By the National Credit Union Administration Board on April 18, 2019.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2019–08166 Filed 4–22–19; 8:45 am]

BILLING CODE 7535–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1610

[Docket No. CPSC–2019–0008]

Request for Information About Possible Exemptions From Testing and Other Changes to the Standard for the Flammability of Clothing Textiles

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Request for information.

SUMMARY: The U.S. Consumer Product Safety Commission (CPSC) requests information about possible changes to the Commission's Standard for the Flammability of Clothing Textiles to expand the list of fabrics that are exempt from testing under the standard. CPSC is particularly interested in receiving information about the possibility of adding spandex to the list of fabrics that are exempt from the testing requirements. CPSC also would like information about the equipment and procedures specified in the standard and possible ways to update those provisions to reduce the burdens associated with the testing requirements.

DATES: CPSC will accept written comments through June 24, 2019.

ADDRESSES: You may submit written comments, identified by Docket No. CPSC–2019–20008, using the methods described below. CPSC encourages you to submit comments electronically, rather than in hard copy.

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *www.regulations.gov*. Follow the instructions for submitting comments provided on the website. To ensure timely processing of comments, please submit all electronic comments through *www.regulations.gov,* rather than by email to CPSC.

Written Submissions: Submit written comments by mail, hand delivery, or courier to: Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions must include the agency name and docket

number for this notice. CPSC may post all comments, without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted by mail, hand delivery, or courier.

Docket: For access to the docket to read background documents or comments, go to: *www.regulations.gov,* and insert the docket number, CPSC–2019–20008, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Allyson Tenney, Director, Division of Engineering, Directorate for Laboratory Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2769; email: *ATenney@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 16, 2017, the Commission requested input from interested parties about ways to reduce the burdens and costs associated with existing regulations, while still protecting consumers from risks of death or injuries associated with consumer products. 82 FR 27636. The Commission followed up on this burden reduction goal in its Fiscal Year 2019 Operating Plan, directing CPSC staff to review possibilities for reducing burdens, including ''expanding exemptions for flammability testing.'' U.S. Consumer Product Safety Commission, Fiscal Year 2019 Operating Plan, p. 18 (Oct. 10, 2018), available at: *https://www.cpsc.gov/content/fiscal-year-2019-operating-plan*. Accordingly, this notice requests information about expanding the exemptions from flammability testing and other ways to reduce the burdens associated with the Commission's Standard for the Flammability of Clothing Textiles.

The Flammable Fabrics Act (15 U.S.C. 1191–1204) authorizes the Commission to issue flammability standards, under certain circumstances, when ''needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage.'' 15 U.S.C. 1193(a). Under this authority, the Commission adopted a Standard for the Flammability of Clothing Textiles in 16 CFR part 1610. The standard applies to clothing and textiles intended to be used for clothing. The regulations provide testing requirements, establish three classes of flammability, set out the criteria for classifying textiles, and prohibit the use of textiles that exhibit rapid and intense burning. The purpose of these regulations is to reduce the risk of injury or death by prohibiting the use of dangerously flammable clothing textiles. 16 CFR 1610.1(a).

The regulations exempt certain fabrics from the testing requirements because ''experience gained from years of testing in accordance with the Standard demonstrates that certain fabrics consistently yield acceptable results when tested in accordance with the Standard.'' 16 CFR 1610.1(d). Currently, the following fabrics are exempt from the testing requirements:

(1) Plain surface fabrics, regardless of fiber content, weighing 2.6 ounces per square yard or more, and

(2) All fabrics, both plain surface and raised-fiber surface textiles, regardless of weight, made entirely from any of the following fibers or entirely from combination of the following fibers: Acrylic, modacrylic, nylon, olefin, polyester, wool.

Id.

II. Request for Information

CPSC is considering changes to the Standard for the Flammability of Clothing Textiles to reduce the costs and burdens associated with these requirements. One specific possibility that industry members have suggested is to add spandex to the list of fabrics in 16 CFR 1610.1(d)(2) that are exempt from the testing requirements in the standard. In addition, possible updates to the equipment and procedures specified in the standard may reduce the burdens associated with the testing requirements. CPSC requests comments on the following specific topics:

A. Possible Exemption of Spandex From Testing Requirements:

1. Data Regarding Spandex Test Results

CPSC staff is aware of stakeholder interest in adding spandex fibers to the Specific Exemptions in 16 CFR 1610.1(d). Please provide relevant information and data about spandex fibers that would help CPSC determine whether spandex ''consistently yield[s] acceptable results when tested in accordance with the Standard.'' CPSC is particularly interested in test data from testing a range of fabric constructions, fabric weights, and fiber blends. For example, it would be helpful to receive information about:

(1) Plain surface fabrics with spandex blended with one or a combination of the exempted fibers listed in 16 CFR 1610.1(d)(2) weighing less than 2.6 ounces per square yard, and

(2) raised surface fabrics, regardless of weight, that contain spandex with one or a combination of the exempted fibers listed in 16 CFR 1610.1(d)(2).

2. Burden and Cost Associated With Testing Spandex

Please provide information about the general test burden and costs associated with testing fabric containing spandex fibers. The following specific information would be helpful:

- How much testing is required for fabrics containing spandex subject to 16 CFR part 1610?
- What are the costs associated with the required testing?
- What types of fabrics and garments require testing?

B. Additional Possible Changes to the Standard:

1. Availability and Specifications of Stop Thread

Section 1610.5 specifies the test apparatus and materials that must be used for flammability testing. The flammability test apparatus must include, among other things, a particular stop thread that is stretched from the spool through stop guides. The stop thread must be ''a spool of No. 50, white, mercerized, 100% cotton sewing thread.'' 16 CFR 1610.5(a)(2)(ii). CPSC staff is aware that this stop thread may have limited availability or that the numbering specified in the standard may be outdated. Please provide comments about the specifications of the stop thread and thread availability. What procedures are used to confirm the thread meets the specifications?

2. Refurbishing (Dry-Cleaning and Laundering)

Section 1610.6(b)(1)(i) specifies a dry cleaning procedure as part of the process of refurbishing plain and raised textile fabrics. As part of the dry cleaning procedure, the solvent perchloroethylene is required in 16 CFR 1610.6(b)(1)(i). Staff is aware of the limited availability of, and legal restrictions on the use of, perchloroethylene solvent. Please provide any comments on the testing burden or cost of performing the dry cleaning procedure with perchloroethylene solvent. Please provide details, and potential alternatives, when possible.

Section 1610.6(b)(1)(ii) requires samples to be washed and dried in accordance with American Association of Textile Chemists and Colorists (AATCC) Test Method 124–2006,

Appearance of Fabrics After Repeated Home Laundering. AATCC 124–2006 requires the use of an automatic washer (Table III) and tumble dryer (Table IV) that meet certain conditions. Staff is aware of the limited availability of automatic washing machines, and possibly dryers, capable of meeting the conditions in AATCC 124–2006. Please provide any comments on the testing burden or cost of performing the laundering procedure with the automatic washing machine and tumble dryer specified in the standard. Please provide details, and potential alternatives, when possible.

3. Test Result Codes

The standard lists reporting codes in 16 CFR 1610.8(b)(2) to describe the burning behavior of raised surface fabrics. The reporting codes, which are based on test results, indicate the proper classification for the textile. CPSC staff has received input that these codes may be confusing. Please provide any comments on the use or needed clarification of these codes.

4. Additional Burdens Associated With 16 CFR Part 1610

Please provide other input and recommendations about opportunities to reduce the cost of testing requirements or other costs and burdens associated with 16 CFR part 1610. Also please identify test procedures that may need clarifications, and provide recommendations or alternatives that may reduce the burdens associated with these regulations, as well as details about the costs of those alternatives.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2019–08140 Filed 4–22–19; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–121694–16]

RIN 1545–BN80

Updating Section 301 Regulations To Reflect Statutory Changes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG–121694–16) that was published in the **Federal Register** on March 26, 2019. The proposed regulations updated existing regulations under section 301 to reflect statutory changes made by the Technical and Miscellaneous Revenue Act of 1988.

DATES: Written or electronic comments and requests for a public hearing are still being accepted and must be received by June 24, 2019.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Grid R. Glyer, (202) 317–6847; concerning submission of comments, Regina Johnson, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction are under sections 301, 356, 368, and 902 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed regulations (REG–121694–16) contains errors which may prove to be misleading and need to be clarified.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–121694–16) that was the subject of FR Doc. 2019–05649, published at 84 FR 11263 (March 26, 2019), is corrected to read as follows:

§ 1.301–1 [Corrected]

■ On page 11266, first column, the sixth and seventh lines of paragraph (f)(3)(ii), the language ''similar to, the transaction in Notice 99–59'' is corrected to read ''similar to the transaction in, Notice 99–59''.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0665; FRL–9992–52–Region 4]

Air Plan Approval; SC; 2010 1-Hour SO_2 NAAQS Transport Infrastructure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve South Carolina's June 25, 2018, State Implementation Plan (SIP) submission pertaining to the ''good neighbor'' provision of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). The good neighbor provision requires each state's implementation plan to address the interstate transport of air pollution in amounts that contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in any other state. In this action, EPA is proposing to determine that South Carolina's SIP contains adequate provisions to prohibit emissions within the State from contributing significantly to nonattainment or interfering with maintenance of the 2010 1-hour SO_2 NAAQS in any other state.

DATES: Written comments must be received on or before May 23, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0665 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via phone number (404) 562–9031 or via electronic mail at *notarianni.michele@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Infrastructure SIPs

On June 2, 2010, EPA promulgated a revised primary SO_2 NAAQS with a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. *See* 75 FR 35520 (June 22, 2010). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. These SIPs, which EPA has historically referred to as ''infrastructure SIPs,'' are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS, and the requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibility under the CAA. Section 110(a) of the CAA requires states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of individual state submissions may vary depending upon the facts and circumstances. The content of the changes proposed in such SIP submissions may also vary depending upon what provisions the state's approved SIP already contains. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. A detailed history, interpretation, and rationale of these SIPs and their requirements can be found in, among other documents, EPA's March 7, 2016 (81 FR 11718), notice of proposed rulemaking related to infrastructure SIP requirements for the 2010 1-hour SO_2 NAAQS for South Carolina in the section titled, *What is EPA's approach to the review of infrastructure SIP submissions?*

Section 110(a)(2)(D)(i)(I) of the CAA requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two clauses of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance of the NAAQS).

On June 25, 2018, the South Carolina Department of Health and Environmental Control (SC DHEC) submitted a revision to the South Carolina SIP addressing only prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS.[1] EPA is proposing to approve SC DHEC's June 25, 2018, SIP submission which certifies that existing SIP provisions satisfy the State's obligation for prongs 1 and 2 for the 2010 1-hour SO_2 NAAQS. All other elements related to the infrastructure requirements of section 110(a)(2) for the 2010 1-hour SO_2 NAAQS for South Carolina are addressed in separate rulemakings.[2]

B. EPA's Designations for the 2010 1-Hour SO_2 NAAQS

In this action, EPA has considered information from the 2010 1-hour SO_2 NAAQS designations process, as discussed in more detail in section III.C of this document. For this reason, a brief summary of EPA's designations process for the 2010 1-hour SO_2 NAAQS is included here.[3]

After the promulgation of a new or revised NAAQS, EPA is required to designate areas as ''nonattainment,'' ''attainment,'' or ''unclassifiable,'' pursuant to section 107(d)(1) of the CAA. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d) of the CAA. The CAA requires EPA to complete the initial designations process within two years of promulgating a new or revised standard. If the Administrator has insufficient information to make these designations by that deadline, EPA has the authority to extend the deadline for completing designations by up to one year.

EPA promulgated the 2010 1-hour SO_2 NAAQS on June 2, 2010. *See* 75 FR 35520 (June 22, 2010). EPA completed the first round of designations for the 2010 1-hour SO_2 NAAQS on July 25, 2013, designating 29 areas in 16 states as nonattainment for the 2010 1-hour SO_2 NAAQS. *See* 78 FR 47191 (August 5, 2013). EPA based this first round of final SO_2 designations on monitored SO_2 concentrations violating the 2010 1-hour SO_2 standard. Following the initial August 5, 2013, designations, three lawsuits were filed against EPA in different U.S. District Courts, alleging that the Agency had failed to perform a nondiscretionary duty under the CAA by not designating all portions of the country within the time lines set forth in section 107(d)(1)(B) of the CAA. In an effort intended to resolve the litigation in one of those cases, EPA and the plaintiffs, Sierra Club and the Natural Resources Defense Council, filed a proposed consent decree with the U.S. District Court for the Northern District of California. On March 2, 2015, the court entered the consent decree[4] which requires EPA to sign for publication in the **Federal Register** notices of the Agency's promulgation of area designations by three specific deadlines: July 2, 2016 (''round 2''); December 31, 2017 (''round 3''); and December 31, 2020 (''round 4'').[5]

On August 21, 2015 (80 FR 51052), EPA separately promulgated air quality characterization requirements for the 2010 1-hour SO_2 NAAQS in the Data Requirements Rule (DRR). The DRR required state air agencies to characterize air quality, through air dispersion modeling or monitoring, in areas associated with sources that emitted greater than 2,000 tons per year (tpy) of SO_2, or that have otherwise been listed under the DRR by EPA or state air agencies. In lieu of modeling or monitoring, state air agencies, by specified dates, could elect to impose federally-enforceable emissions limitations on those sources restricting their annual SO_2 emissions to 2,000 tpy or less, or provide documentation that the sources have been shut down. EPA expected that the information generated by implementation of the DRR would help inform SO_2 designations specified in the March 2, 2015, consent decree. EPA signed **Federal Register** notices of promulgation of round 2 designations[6]

[1] On May 8, 2014, SC DHEC submitted a SIP revision addressing all infrastructure elements with respect to the 2010 1-hour SO_2 NAAQS with the exception of prongs 1 and 2 of CAA 110(a)(2)(D)(i)(I).

[2] EPA acted on the other elements of South Carolina's May 8, 2014, infrastructure SIP submission for the 2010 1-hour SO_2 NAAQS on May 24, 2016 (81 FR 32651) and September 24, 2018 (83 FR 48237).

[3] While designations may provide useful information for purposes of analyzing transport, particularly for a more source-specific pollutant such as SO_2, EPA notes that designations themselves are not dispositive of whether or not upwind emissions are impacting areas in downwind states. EPA has consistently taken the position that as to impacts, CAA section 110(a)(2)(D) refers only to prevention of 'nonattainment' in other states, not to prevention of nonattainment in designated nonattainment areas or any similar formulation requiring that designations for downwind nonattainment areas must first have occurred. *See e.g.,* Clean Air Interstate Rule, 70 FR 25162, 25265 (May 12, 2005); Cross-State Air Pollution Rule, 76 FR 48208, 48211 (Aug. 8, 2011); Final Response to Petition from New Jersey Regarding SO_2 Emissions From the Portland Generating Station, 76 FR 69052 (Nov. 7, 2011) (finding facility in violation of the prohibitions of CAA section 110(a)(2)(D)(i)(I) with respect to the 2010 1-hour SO_2 NAAQS prior to issuance of designations for that standard).

[4] Consent Decree, *Sierra Club* v. *McCarthy,* Case No. 3:13–cv–3953–SI (N.D. Cal. Mar. 2, 2015).

[5] The term ''round'' in this instance refers to which ''round of designations.''

[6] EPA and state documents and public comments related to the round 2 final designations are in the docket at *regulations.gov* with Docket ID NO. EPA–HQ–OAR–2014–0464 and at EPA's website for SO_2

on June 30, 2016 (81 FR 45039 (July 12, 2016)), and on November 29, 2016 (81 FR 89870 (December 13, 2016)), and round 3 designations [7] on December 21, 2017 (83 FR 1098 (January 9, 2018)). For South Carolina, EPA designated all counties as attainment/unclassifiable in round 3. Because all counties in South Carolina are now designated for the 2010 1-hour SO_2 NAAQS, and no DRR sources in the State opted to monitor to inform Round 4 SO_2 designations, no areas in South Carolina will be designated in round 4.[8] There are no nonattainment areas in South Carolina for the 2010 1-hour SO_2 NAAQS.[9]

II. Relevant Factors Used To Evaluate 2010 1-Hour SO_2 Interstate Transport SIPs

Interstate transport of SO_2 is unlike the transport of fine particulate matter ($PM_{2.5}$) or ozone in that SO_2 is not a regional pollutant and does not commonly contribute to widespread nonattainment over a large (and often multi-state) area. The transport of SO_2 is more analogous to the transport of lead (Pb) because its properties result in localized pollutant impacts very near the emissions source. However, ambient concentrations of SO_2 do not decrease as quickly with distance from the source as Pb because of the properties and typical release heights of SO_2. Emissions of SO_2 travel farther and have wider ranging impacts than emissions of Pb, but do not travel far enough to be treated in a manner similar to ozone or $PM_{2.5}$. The approaches that EPA has adopted for ozone or $PM_{2.5}$ transport are too regionally focused and the approach for Pb transport is too tightly circumscribed to the source. SO_2 transport is therefore a unique case and requires a different approach.

Given the properties of SO_2, EPA agrees with South Carolina's selection of a spatial scale with dimensions from four to 50 kilometers (km) from point sources—the ''urban scale''—to assess trends in area-wide air quality that might impact downwind states.[10] SC DHEC selected the urban scale as appropriate for assessing trends in both area-wide air quality and the effectiveness of large-scale pollution control strategies at SO_2 point sources. SC DHEC supported this transport distance threshold with references to 40 CFR 58, Appendix D, Section 4.4.4(4) ''Urban scale'', which states that measurements in this scale would be used to estimate SO_2 concentrations over large portions of an urban area with dimensions from four to 50 km. The State also notes that 50 km is the transport distance threshold that EPA recommends for use with the air quality dispersion model called the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD). AERMOD is EPA's preferred modeling platform for regulatory purposes (Appendix W of 40 CFR part 51).[11] EPA agrees with the State's selection and application of the 50-km threshold as a reasonable distance to evaluate emission source impacts into neighboring states and to assess air quality monitors within 50 km of the State's border, which is discussed further in section III.C.

As discussed in sections III.C and III.D, EPA first reviewed the State's analysis to assess how the State evaluated the transport of SO_2 to other states, the types of information used in the analysis, and the conclusions drawn by the State. EPA then conducted a weight of evidence analysis based on a review of the State's submission and other available information, including SO_2 air quality and available source modeling for states within 50 km of the South Carolina border.[12]

III. South Carolina's SIP Submission and EPA's Analysis

A. State Submission

On June 25, 2018, SC DHEC submitted a revision to the South Carolina SIP addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS. South Carolina conducted a weight of evidence analysis to examine whether SO_2 emissions from the State adversely affect attainment or maintenance of the 2010 1-hour SO_2 NAAQS in downwind states.

SC DHEC reviewed the following information to support its conclusion that South Carolina does not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in downwind states: Trends in SO_2 design values (DVs) [13] at the State's air quality monitors from 2008–2017; highest monitored SO_2 DVs for monitors with complete, quality-assured data and located within South Carolina and within Florida, Georgia, and North Carolina; SO_2 emissions trends both statewide (for the years 2008, 2011, and 2014) and for the State's title V sources (for the years 2008–2016); available SO_2 modeling data for the State's round 3 DRR-subject sources; and State and federal regulations and State statutes that establish requirements for sources

designations at *https://www.epa.gov/sulfur-dioxide-designations*.

[7] EPA and state documents and public comments related to round 3 final designations are in the docket at *regulations.gov* with Docket ID NO. EPA–HQ–OAR–2017–0003 and at EPA's website for SO_2 designations at *https://www.epa.gov/sulfur-dioxide-designations*.

[8] *See Technical Support Document: Chapter 37 Final Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for South Carolina at https://www.epa.gov/sites/production/files/2017-12/documents/37-sc-so2-rd3-final.pdf. See also Technical Support Document: Chapter 37 Intended Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for South Carolina at https://www.epa.gov/sites/production/files/2017-08/documents/38sc_so2_rd3-final.pdf.*

[9] On August 5, 2013 (78 FR 47191) and effective October 4, 2013, EPA designated 29 areas in 16 states as nonattainment for the 2010 1-hour SO_2 NAAQS based on violating monitors using air quality data for the years 2009–2011, but did not, at that time, designate other areas in the country. On July 12, 2016 (81 FR 45039), effective September 12, 2016, and December 13, 2016 (81 FR 89870), effective January 12, 2017, EPA published a final rule establishing air quality designations for 65 areas in 24 states for the 2010 SO_2 NAAQS including seven nonattainment areas, 41 attainment/unclassifiable areas, and 17 unclassifiable areas. On January 9, 2018 (83 FR 1098) effective April 9, 2018, EPA designated six areas as nonattainment; 23 areas as unclassifiable; and the rest of the areas covered by this round in all states, territories, and tribal lands as attainment/unclassifiable. No areas in South Carolina were designated as nonattainment in these actions. *See https://www.epa.gov/sulfur-dioxide-designations/sulfur-dioxide-designations-regulatory-actions.*

[10] For the definition of spatial scales for SO_2, please see 40 CFR part 58, Appendix D, section 4.4 (''Sulfur Dioxide (SO_2) Design Criteria''). For further discussion on how EPA applies these definitions with respect to interstate transport of SO_2, *see* EPA's notice of proposed rulemaking on Connecticut's SO_2 transport SIP. 82 FR 21351, 21352, 21354 (May 8, 2017).

[11] EPA established a non-binding technical assistance document to assist states and other parties in their efforts to characterize air quality through air dispersion modeling for sources that emit SO_2 titled, ''SO_2 NAAQS Designations Modeling Technical Assistance Document. This draft document was first released in spring 2013. Revised drafts were released in February and August of 2016 (*see https://www.epa.gov/sites/production/files/2016-06/documents/so2modelingtad.pdf*).

[12] This proposed approval action is based on the information contained in the administrative record for this action, and does not prejudge any future EPA action that may make other determinations regarding the air quality status in South Carolina and downwind states. Any such future action, such as area designations under any NAAQS, will be based on their own administrative records and the EPA's analyses of information that becomes available at those times. Future available information may include, and is not limited to, monitoring data and modeling analyses conducted pursuant to EPA's DRR and information submitted to EPA by states, air agencies, and third-party stakeholders such as citizen groups and industry representatives.

[13] A ''Design Value'' is a statistic that describes the air quality status of a given location relative to the level of the NAAQS. The DV for the primary 2010 1-hour SO_2 NAAQS is the 3-year average of annual 99th percentile daily maximum 1-hour values for a monitoring site. The interpretation of the primary 2010 1-hour SO_2 NAAQS including the data handling conventions and calculations necessary for determining compliance with the NAAQS can be found in Appendix T to 40 CFR part 50.

of SO_2 emissions. South Carolina noted that federal regulations and competition from lower natural gas prices resulted in four coal-fired electric generating units (EGUs) within the State either shutting down or switching to cleaner fuels. The State identified these units and summarized the history of the shutdowns and switches to cleaner fuels. South Carolina also included SO_2 emissions trends for the Southeast from 2000–2016 and noted that there is a consistent downward trend.

Based on this weight of evidence analysis, the State concluded that emissions within South Carolina will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state. The State based its conclusions for Prong 1 on the actual and projected downward trends of SO_2 emissions in South Carolina, trends in SO_2 DVs for South Carolina's monitors and other states' monitors within 50 km of the South Carolina border, DRR modeling results, and established federal and State control measures affecting SO_2. The State based its conclusions for Prong 2 on emissions trends of SO_2 in South Carolina and in the Southeast and established federal and State control measures which reduce SO_2 emissions. EPA's evaluation of South Carolina's submission is detailed in sections III.B, C, and D.

B. EPA's Evaluation Methodology

EPA believes that a reasonable starting point for determining which sources and emissions activities in South Carolina are likely to impact downwind air quality in other states with respect to the 2010 1-hour SO_2 NAAQS is by using information in EPA's National Emissions Inventory (NEI).[14] The NEI is a comprehensive and detailed estimate of air emissions for criteria pollutants, criteria pollutant precursors, and hazardous air pollutants from air emissions sources that is updated every three years using information provided by the states and other information available to the EPA. EPA used the 2014 NEI (version 2), the most recently available, complete, and quality assured dataset of the NEI. Table 1 shows that point sources in South Carolina contribute approximately 89 percent of the State's total SO_2 emissions, followed by nonpoint sources at six percent and fires at four percent.

TABLE 1—SUMMARY OF 2014 NEI (VERSION 2) SO_2 DATA FOR SOUTH CAROLINA BY SOURCE CATEGORY

Category	Emissions (tpy)	Percent of total SO_2 emissions
Point	46,913.26	89
Nonpoint	2,986.99	6
Fire	2,300.06	4
Onroad	546.07	1
Nonroad	47.85	0
SO_2 Emissions Total	52,794.23	100

SC DHEC provided NEI data for the years 2008, 2011, and 2014, which showed a decrease in SO_2 emissions in the State of approximately 73 percent from 2008 to 2014. SC DHEC notes in its submission that the largest sources of SO_2 emissions in South Carolina are power plants and other industrial facilities that burn fossil fuels. According to the NEI data in the State's submission and the 2014 NEI version 2 (shown in Table 2), the majority of SO_2 emissions in South Carolina originate from fuel combustion at point sources.[15] In 2014, the total SO_2 emissions from fuel combustion point sources in South Carolina comprised approximately 72 percent of the total SO_2 emissions in the State. Because emissions from the other listed source categories are more dispersed throughout the State, those categories are less likely to cause high ambient concentrations when compared to a point source on a ton-for-ton basis. Therefore, EPA believes that it is appropriate to focus the analysis on SO_2 emissions from fuel combustion at South Carolina's point sources which are located within the ''urban scale,'' *i.e.,* within 50 km of one or more state borders.

TABLE 2—SUMMARY OF 2014 NEI (VERSION 2) SO_2 DATA FOR SOUTH CAROLINA BY SOURCE TYPES

Category	Emissions (tpy)
Fuel Combustion: EGUs (All Fuel Types)	27,799.38
Fuel Combustion: Industrial Boilers/ Internal Combustion Engines (All Fuel Types)	10,243.87
Fuel Combustion: Commercial/Institutional (All Fuel Types)	41.40
Fuel Combustion: Residential (All Fuel Types)	128.74
Industrial Processes (All Categories)	8,963.50
Mobile Sources (All Categories)	2,602.33
Fires (All Types)	2,363.13
Waste Disposal	648.48
Solvent Processes	0.12
Miscellaneous (Non-Industrial)	3.30
SO_2 Emissions Total	52,794.23

EPA's current implementation strategy for the 2010 1-hour SO_2 NAAQS includes the flexibility to characterize air quality for stationary sources via either data collected at ambient air quality monitors sited to capture the points of maximum concentration, or air dispersion modeling. EPA's assessment of SO_2 emissions from fuel combustion at South Carolina's point sources located within approximately 50 km of another state and their potential impact on neighboring states is informed by all available data at the time of this rulemaking.[16]

As discussed in section I.B., many air agencies used air dispersion modeling to characterize air quality in the vicinity of large SO_2 emitting sources to identify the maximum 1-hour SO_2 concentrations in ambient air which informed EPA's round 2 and 3 SO_2 designations. These designations were based on EPA's application of the nationwide analytical approach to, and technical assessment of, the weight of evidence for each area, including but not limited to available air quality monitoring data and air quality modeling results. The 2010 1-hour SO_2

[14] EPA's NEI is available at *https://www.epa.gov/air-emissions-inventories/national-emissions-inventory*.

[15] Residential fuel combustion is considered a nonpoint source, and thus, residential fuel combustion data is not included in the point source fuel combustion data and related calculations.

[16] EPA notes that the evaluation of other states' satisfaction of section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS can be informed by similar factors found in this proposed rulemaking, but may not be identical to the approach taken in this or any future rulemaking for South Carolina, depending on available information and state-specific circumstances.

standard is violated at an ambient air quality monitoring site (or in the case of dispersion modeling, at an ambient air quality receptor location) when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentrations exceeds 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50. EPA's preferred modeling platform for regulatory purposes is AERMOD (Appendix W of 40 CFR part 51).[17] In most modeling analyses, the impacts of the actual emissions for one or more of the recent 3-year periods (*e.g.,* 2012–2014, 2013–2015, 2014–2016) were considered, and in some cases the modeling was of currently effective limits on allowable emissions in lieu of or as a supplement to modeling of actual emissions.

The available air dispersion modeling of large SO_2 sources can support transport related conclusions about whether sources in one state are potentially causing or contributing to violations of the 2010 1-hour SO_2 standard in other states. While AERMOD was not designed specifically to address interstate transport, the 50-km distance that EPA recommends for use with AERMOD aligns with the urban monitoring scale, and thus, EPA believes that the use of AERMOD provides a reliable indication of air quality for transport purposes.

As described in this section, EPA proposes to conclude that an assessment of South Carolina's satisfaction of the prong 1 and 2 requirements under section 110(a)(2)(D)(i)(I) of the CAA for the 2010 1-hour SO_2 NAAQS may be reasonably based upon evaluating the downwind impacts of SO_2 emissions from fuel combustion at South Carolina's point sources located within approximately 50 km of another state and upon any regulations intended to address fuel combustion at South Carolina's point sources.

C. EPA's Prong 1 Evaluation—Significant Contribution to Nonattainment

Prong 1 of the good neighbor provision requires states' plans to prohibit emissions that will significantly contribute to nonattainment of a NAAQS in another state. SC DHEC confirms in its submission that South Carolina's SIP contains adequate provisions to prevent sources and other types of emissions activities within the State from contributing significantly to nonattainment in any other state with respect to the 2010 1-hour SO_2 standard. To evaluate South Carolina's satisfaction of prong 1, EPA assessed the State's implementation plan with respect to the following factors: (1) SO_2 ambient air quality and emissions trends for South Carolina and neighboring states; (2) potential ambient impacts of SO_2 emissions from certain facilities in South Carolina on neighboring states based on available air dispersion modeling results; (3) State statutes and SIP-approved regulations that address SO_2 emissions; and (4) federally enforceable regulations that reduce SO_2 emissions. A detailed discussion of South Carolina's SIP submission with respect to each of these factors follows.[18] EPA proposes that these factors, taken together, support the Agency's proposed determination that South Carolina's SIP adequately prohibits emissions that will significantly contribute to nonattainment of the 2010 1-hour SO_2 NAAQS in another state. EPA's proposed conclusion is based, in part, on the fact that the Agency does not have information indicating that there are violations of the 2010 1-hour SO_2 NAAQS in the surrounding states. In addition, the downward trends in SO_2 emissions and DVs for air quality monitors in the State, combined with federal and State regulations and statutes affecting SO_2 emissions of South Carolina's sources, further support EPA's proposed conclusion.

1. SO_2 Air Dispersion Modeling

a. State Submission

In its June 25, 2018, SIP revision, SC DHEC summarized how each of the State's sources subject to the DRR elected to comply with this rule by either taking a federally-enforceable limit or using either modeling or monitoring to characterize SO_2 air quality around the source. Of the eight sources in the State subject to the DRR, three accepted federally-enforceable permit limits and five sources conducted dispersion modeling.[19] SC DHEC provided a summary of the air dispersion modeling results for the five modeled sources: Century Aluminum of South Carolina[20] (Century Aluminum); International Paper-Eastover Mill (IP Eastover); Resolute FP US INC (Resolute); Santee Cooper Cross Generating Station (Santee Cooper Cross); and SCE&G Wateree Station (SCE&G Wateree). IP Eastover and SCE&G Wateree were modeled together. Of these five sources, one source (Resolute) is within 50 km of another state (North Carolina) at approximately 7 km using the nearest property boundary to North Carolina and modeled a maximum 2010 1-hour SO_2 DV of 69 ppb. SC DHEC notes that Resolute used a modeling grid which extended approximately 4 km into North Carolina. A summary of the modeling results for Resolute, including supplemental data EPA has reviewed as part of the Agency's analysis, is shown in Table 3 of section III.C.1.b of this action.

b. EPA Analysis

For the SO_2 air dispersion modeling factor, EPA evaluated the DRR modeling data in South Carolina's June 25, 2018, submission for sources in the State and supplemented this data with available, existing DRR modeling results for sources in the adjacent states of Georgia and North Carolina that are within 50 km of the South Carolina border.[21] The purpose of evaluating modeling results in adjacent states within 50 km of the South Carolina border is to ascertain whether these areas are attaining the 2010 1-hour SO_2 standard and, if not, whether any nearby sources in South Carolina are contributing to a NAAQS violation. In addition, EPA identified South Carolina SO_2 emission sources emitting greater than 100 tons of SO_2 in 2017 that are not subject to the DRR and are located up to 50 km from South Carolina's border to evaluate whether the SO_2 emissions from these sources could interact with SO_2 emissions from the nearest source in a neighboring state

[17] EPA established a draft non-binding technical assistance document to assist states and other interested parties in their efforts to characterize air quality through air dispersion modeling for sources that emit SO_2 titled, ''SO_2 NAAQS Designations Modeling Technical Assistance Document.'' This draft document was first released in spring 2013. Revised drafts were released in February and August of 2016 (*see https://www.epa.gov/sites/production/files/2016-06/documents/so2modelingtad.pdf*).

[18] EPA has reviewed South Carolina's submission, and where new or more current information has become available, is including this information as part of the Agency's evaluation of this submission.

[19] South Carolina's DRR sources which accepted federally-enforceable permit limits to exempt out of the DRR requirements are: Duke Energy Carolinas LLC—W.S. Lee Steam Station; South Carolina Electric & Gas (SCE&G) McMeekin Station; and WestRock CP LLC (formerly RockTenn). *See* Docket ID No. EPA–HQ–OAR–2017–0003. Thus, there is no available air dispersion modeling under the DRR for these sources.

[20] Century Aluminum was formerly known as Alumax of South Carolina.

[21] Appendix A.1—titled, ''AERMOD (AMS/EPA Regulatory Model)'' of Appendix W to 40 CFR part 51—is appropriate for SO_2 in instances where steady-state assumptions for transport distances up to 50 km occur. While not designed specifically to address interstate transport, the 50-km distance which EPA recommends for use with AERMOD aligns with the urban monitoring scale, and thus, EPA believes that the use of AERMOD provides a reliable indication of SO_2 air quality for transport purposes.

in such a way as to contribute significantly to nonattainment in that state.

Table 3 provides a summary of the modeling results for Resolute, the one modeled DRR source in South Carolina which is located within 50 km of another state (North Carolina). The modeling analyses for Resolute resulted in no modeled violations of the 2010 1-hour SO_2 NAAQS within the 50-km area surrounding the facility and no violations of the standard within the modeling domain which extends into North Carolina. All other areas within 50 km of Resolute are contained within South Carolina's borders. As a result, no further analysis of any other neighboring states is necessary for assessing the impacts of the interstate transport of SO_2 pollution from Resolute.

Table 4 provides a summary of the modeling results for DRR sources in other neighboring states which are located within 50 km of South Carolina and which elected to provide air dispersion modeling under the DRR: Three sources in Georgia (Georgia Power Company—Plant McIntosh (Plant McIntosh), Georgia-Pacific Consumer Products—Savannah River Mill (Savannah River Mill), International Paper—Savannah (IP-Savannah)) [22] and two sources in North Carolina (Allen Steam Station—Duke Energy Carolinas, LLC (Duke-Allen) [23] and Duke Energy's Marshall Steam Station (Duke-Marshall)).[24] The predicted maximum impacts from the model did not violate the 2010 1-hour SO_2 NAAQS for any of the five sources.[25]

TABLE 3—SOUTH CAROLINA SOURCES WITH DRR MODELING LOCATED WITHIN 50 km OF ANOTHER STATE

DRR source	County	Approximate distance from source to adjacent state	Other facilities included in modeling	2010 1-hour SO_2 Model DV (ppb)	Model grid extends into another state?
Resolute	York	7 km	Yes—Duke-Allen (NC); Winthrop University; General Chemicals, LLC; Guardian Industries; Spring Industries—Leroy Plant.	69*	Yes—into NC (western portion of Union County in North Carolina)

*Resolute's 2010 1-hour SO_2 modeled DV is based on 2012–2014 actual emissions for Resolute and all North Carolina permitted facilities within 50 km of the source, and allowable emissions for all South Carolina permitted facilities within 50 km of the source.

TABLE 4—OTHER STATE'S SOURCES WITH DRR MODELING LOCATED WITHIN 50 km OF SOUTH CAROLINA

DRR source	County (state)	Approximate distance from source to South Carolina border	Other facilities included in modeling	2010 1-hour SO_2 model DV (ppb)	Model grid extends into another state?
Plant McIntosh *(Modeled with Savannah River Mill)*.	Effingham (GA).	Less than 5 km.	Effingham County Power (GA); SCE&G-Jasper Generating Station (SC)—(*based on allowable/potential to emit (PTE) emissions*).	71.6 for both Plant McIntosh and Savannah River Mill (*based on 2012–2014 actual emissions for Plant McIntosh*).	Yes—into SC (western portion of Jasper County, SC).
Savannah River Mill *(Modeled with Plant McIntosh)*.	Effingham (GA).	Less than 5 km.	Effingham County Power (GA); SCE&G-Jasper Generating Station (SC)—.	71.6 for both Plant McIntosh and Savannah River Mill*.	Yes—into SC (western portion of Jasper County, SC).
IP—Savannah	Chatham (GA)	Less than 5 km.	None	66 (*based on 2011–2013 actual and allowable/PTE emissions*).	Yes—into SC (western portion of Jasper County, SC).
Duke-Allen	Gaston (NC) ..	5 km	Duke-Marshall	46.6 (*based on 2013–2015 actual SO_2 emissions*).	Yes—into SC (York County and portions of Cherokee, Union, Chester, Lancaster, and Chesterfield Counties in SC).
Duke-Marshall	Catawba (NC)	53 km	Duke-Allen	68 (*based on 2013–2015 actual SO_2 emissions*).	Yes—into SC (small portion of York and Cherokee Counties in SC).

*Savannah River Mill's 2010 1-hour SO_2 modeled DV is based on 2012–2014 actual emissions for three primary power boilers and allowable/PTE emissions for 13 emissions units at Savannah River Mill. (For more details, see pp. 67–68 of EPA's *Technical Support Document: Chapter 10 Proposed Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for Georgia* located at *https://www.epa.gov/sites/production/files/2017-08/documents/10_ga-so2-rd3-final.pdf*.)

[22] Georgia Power's Plant Kraft is a DRR source located less than 5 km from the South Carolina border which has shut down as of October 13, 2015, and the operating permit was formally revoked on November 9, 2016. The DRR modeling results for Georgia's DRR round 3 sources may be found at: *https://www.epa.gov/sites/production/files/2017-08/documents/10_ga-so2-rd3-final.pdf*.

[23] The Duke-Allen facility did not meet the DRR emission threshold of 2,000 tons or more annually. However, North Carolina elected to characterize the area around the source through air dispersion modeling.

[24] Given that distances are approximate, the Duke-Marshall facility is included in Table 4 with an approximate distance of 53 km from the South Carolina border.

[25] Georgia's Plant McIntosh and Savannah River Mill were modeled together as shown in Table 4.

As mentioned previously, EPA finds that it is appropriate to examine the impacts of SO_2 emissions from stationary sources in South Carolina in distances ranging from zero km to 50 km from the sources. Therefore, in addition to those sources addressed in Tables 3 and 4 of this action, EPA assessed the potential impacts of SO_2 emissions from stationary sources not subject to the DRR and located up to 50 km from South Carolina's borders to evaluate trends in area-wide air quality. Table 5 lists sources in South Carolina not characterized under the DRR [26] that emitted greater than 100 tpy of SO_2 in 2017 and are located within 50 km of the State's border. All three of the identified sources were located along the border of South Carolina and North Carolina.

TABLE 5—SOUTH CAROLINA NON-DRR SO_2 SOURCES EMITTING GREATER THAN 100 tpy NEAR NEIGHBORING STATES

South Carolina source	2017 Annual SO_2 emissions (tons)	Approximate distance to South Carolina border (km)	Closest neighboring state	Approximate distance to nearest neighboring state SO_2 source (km)	Nearest neighboring state SO_2 source & 2017 emissions (>100 tons of SO_2)
Milliken & Co. Magnolia Plant.	697	5.5	North Carolina	23	Duke Energy Carolinas, LLC—Cliffside Steam Station (858 tons).
Guardian Industries ...	103	22.5	North Carolina	53	Duke—Allen (354 tons).
WestRock CP LLC	1,480	44	North Carolina	68	Pilkington North America, Inc. (Pilkington) (383 tons).

Currently, EPA does not have monitoring or modeling data suggesting that North Carolina is impacted by SO_2 emissions from the Milliken & Co. Magnolia Plant or WestRock CP LLC. With regard to the WestRock facility, EPA believes that the 68-km distance between the WestRock facility in South Carolina and the Pilkington facility, the nearest source in North Carolina with SO_2 emissions greater than 100 tpy, makes it unlikely that SO_2 emissions from WestRock could interact with SO_2 emissions from Pilkington in such a way as to contribute significantly to nonattainment in North Carolina.

Allowable SO_2 emissions from the Guardian Industries facility were included in South Carolina's modeling of the Resolute DRR source,[27] which was addressed in Table 3. This modeling did not show any violations of the 2010 1-hour SO_2 NAAQS within 50 km of the South Carolina border, and thus, indicates that Guardian Industries does not significantly contribute to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state.

The modeling results in Tables 3 and 4 predict no violations of the 2010 1-hour SO_2 NAAQS within 50 km of the South Carolina border, and thus, EPA believes that these results, weighed along with the other factors in this document and the Agency's analysis of the South Carolina sources addressed in Table 5, support EPA's proposed conclusion that sources in South Carolina do not significantly contribute to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state.

2. SO_2 Emissions Trends

a. State Submission

As part of its SIP submission, South Carolina presented SO_2 emissions trends both statewide (for the years 2008–2014) and for the State's title V sources (for the years 2008–2016). Statewide SO_2 emissions have decreased by approximately 73 percent from 197,136 tpy in 2008 to 52,782 tpy in 2014,[28] and SO_2 emissions from South Carolina's title V sources have decreased by approximately 88 percent from 191,058 tpy in 2008 to 22,422 tpy in 2016.

b. EPA Analysis

EPA reviewed the statewide and title V source SO_2 emissions trends data provided by South Carolina and agrees that the data show a significant decline (73 and 88 percent, respectively, as noted earlier). Based on the emissions trends information in South Carolina's submission, EPA believes that these declining SO_2 emissions may suggest that South Carolina does not significantly contribute to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state, particularly given that SO_2 emissions limits for South Carolina's title V sources are federally enforceable conditions established in title V permits.

3. SO_2 Ambient Air Quality

a. State Submission

In its June 25, 2018, SIP submission, SC DHEC illustrated graphically that the DVs from 2008 through 2017 at nine out of 10 monitors in South Carolina in EPA's Air Quality System (AQS) [29] (''AQS monitors'') have remained well below the 2010 1-hour SO_2 NAAQS since 2008.[30] The one monitor with data above the 2010 1-hour SO_2 NAAQS from 2008 to 2010 attained the standard in 2011, and the DVs for this monitor sharply decreased between 2011 to 2017. SC DHEC notes that the State's AQS monitors are all attaining the 2010 1-hour SO_2 NAAQS and the DVs at these monitors show a consistent downward trend. In addition, SC DHEC noted that the highest monitored DV in the State for the 2014–2016 time period is 29 ppb, which is 39 percent of the 2010 1-hour SO_2 NAAQS.

SC DHEC also included a figure displaying AQS monitors located in South Carolina and in other states within 50 km of the South Carolina border. This figure depicts a total of 14 AQS monitors (seven South Carolina monitors with DVs; four monitors in other states with DVs; and three AQS monitors in North Carolina that were established to characterize the air quality around specific sources subject

[26] One source, Westrock CP, LLC accepted a permit limit to exempt out of being subject to the DRR.

[27] *See* pp.81–82 and p.92 of EPA's *Technical Support Document: Chapter 37 Intended Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for South Carolina* located at: *https://www.epa.gov/sites/production/files/2017-08/documents/38sc_so2_rd3-final.pdf*.

[28] EPA notes there is a slight difference in the 2014 NEI value for South Carolina's SO_2 emissions between what SC DHEC provided based on version 1 of the NEI (52,782 tpy) and the value that EPA relied upon from version 2 of the NEI (52,794 tpy).

[29] EPA's AQS contains ambient air pollution data collected by EPA, state, local, and tribal air pollution control agencies. *See https://www.epa.gov/air-trends/air-quality-design-values*.

[30] Three of the 10 monitors located in South Carolina shown in the figure on p.8 of the State's June 25, 2018, SIP submission (named ''DHEC,'' ''Powdersville,'' and ''York'') have shut down.

to EPA's DRR to inform the Agency's future round 4 designations for the 2010 1-hour SO_2 NAAQS in lieu of modeling (hereinafter referred to as ''DRR monitors''). Of the 11 monitors with DVs, 10 monitors have had DVs at or just below the 2010 1-hour SO_2 NAAQS since the 2009–2011 DV time period, and all DVs have been below the standard since the 2013–2015 DV period. Two of the North Carolina DRR monitors within 50 km of South Carolina have annual 99th percentile 1-hour SO_2 concentrations above the 2010 1-hour SO_2 NAAQS for 2017. SC DHEC also provided the highest monitored SO_2 DVs for the years 2014–2016 at AQS monitors anywhere in Florida, Georgia, and North Carolina (*i.e.,* 81, 60, and 23 ppb, respectively).[31] SC DHEC notes that the nearest SO_2 nonattainment area is the Nassau County partial area [32] in Florida, which is over 150 km from the South Carolina border.

b. EPA Analysis

Since the time of development of South Carolina's SIP submission, certified AQS monitoring data has become available for South Carolina and the surrounding states to inform the 2015–2017 DVs. EPA has summarized the DVs from 2012 to 2017 for AQS monitors in South Carolina within 50 km of another state in Table 6 and for AQS monitors in the surrounding states of Georgia and North Carolina within 50 km of South Carolina in Table 7 using relevant data from EPA's AQS DV reports for recent and complete 3-year periods.

TABLE 6—2010 1-HOUR SO_2 DVS FOR AQS MONITORS IN SOUTH CAROLINA WITHIN 50 km OF ANOTHER STATE'S BORDER

County	AQS site code	2010–2012 DV (ppb)	2011–2013 DV (ppb)	2012–2014 DV (ppb)	2013–2015 DV (ppb)	2014–2016 DV (ppb)	2015–2017 DV (ppb)	Approximate distance to state border (km)
Greenville	450450008	*ND	*ND	*ND	3	2	2	37 (NC)
Oconee	450730001	*ND	*ND	*ND	3	2	2	3 (GA)

*ND indicates ''No Data'' due to monitor startup or shutdown (operated less than three years), data quality issues, or incomplete data.

As shown in Table 6, the 2015, 2016, and 2017 DVs for the two monitoring sites in South Carolina (Greenville and Oconee Counties) within 50 km of another state's border have remained well below the 2010 1-hour SO_2 NAAQS.

Table 7 shows that there are three AQS monitors in Georgia (Chatham and Richmond Counties) and one AQS monitor in North Carolina (Mecklenberg County) with 3-year DVs which are located within 50 km of the South Carolina border. Currently, there are no AQS monitors indicating a violation of the 2010 1-hour SO_2 NAAQS located within 50 km of South Carolina in the surrounding states of Georgia and North Carolina. Further, the DVs for the monitors in Table 7 have declined since 2013 for Georgia's Chatham County monitor with AQS site code 130511002 and since 2012 for North Carolina's Mecklenberg County monitor. For Georgia's Richmond County monitor and Chatham County monitor with AQS site code 130511002, the DVs similarly show a downward trend, excluding those time periods for which there is no data to determine a DV. Also, the most recent DVs for 2015–2017 are well below the 2010 1-hour SO_2 NAAQS. Thus, EPA believes that these data support EPA's proposed conclusion that South Carolina does not significantly contribute to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state.

TABLE 7—2010 1-HOUR SO_2 DVS FOR AQS MONITORS WITHIN 50 km OF SOUTH CAROLINA IN SURROUNDING STATES

State	County	AQS site code	2010–2012 DV (ppb)	2011–2013 DV (ppb)	2012–2014 DV (ppb)	2013–2015 DV (ppb)	2014–2016 DV (ppb)	2015–2017 DV (ppb)	Approximate distance to SC border (km)
Georgia	Chatham	130511002	68	79	78	70	52	48	3
	Chatham	130510021	74	66	*ND	*ND	*ND	32	2
	Richmond	132450091	*ND	*ND	*ND	61	60	52	6
North Carolina	Mecklenberg	371190041	14	10	7	7	5	5	20

*ND indicates ''No Data'' due to monitor startup or shutdown (operated less than three years), data quality issues, or incomplete data.

As previously discussed, EPA's definitions of spatial scales for SO_2 monitoring networks indicate that distances up to 50 km from a stationary source would be useful for assessing trends in area-wide air quality. Thus, EPA also evaluated monitoring data provided to date for DRR monitors located in states adjacent to South Carolina within 50 km of the State's border. These DRR monitors do not have three or more years of complete data to determine the DVs for these monitors. However, EPA evaluated the available, annual 99th percentile SO_2 concentration data for these monitors.

No sources in South Carolina elected to establish monitors under the DRR. However, Table 8 lists three DRR sources in North Carolina within 50 km of the South Carolina border which elected to establish SO_2 monitors to characterize the air quality in the associated source areas. The Buncombe County monitor in North Carolina was sited in the vicinity of the Asheville Steam Electric Plant—Duke Energy Progress, Inc (Duke-Asheville), a DRR source. Though a single maximum 1-hour concentration is not directly comparable to the 2010 1-hour SO_2 NAAQS, which is in the form of the 3-year average of the 99th percentile of

[31] EPA notes that Florida is not adjacent to South Carolina.

[32] The term ''partial area'' in this instance refers to when EPA has designated a portion a county nonattainment for a NAAQS.

daily maximum 1-hour SO_2 values, EPA notes that the highest concentration observed at the Buncombe County monitor in 2017 was 16.6 ppb, which is approximately 78 percent below the level of the 2010 1-hour SO_2 NAAQS. The other two DRR monitors in North Carolina within 50 km of South Carolina—the Brunswick and Haywood County monitoring sites—both exceeded the 2010 1-hour SO_2 NAAQS based on one year of complete data for 2017. For 2018, only the Haywood County monitoring site exceeded the 2010 1-hour SO_2 NAAQS. The Brunswick and Haywood County monitoring sites are sited in the area of maximum concentration for the DRR sources named CPI USA North Carolina—Southport Plant (CPI) and Evergreen Packaging Group– Canton Mill (Evergreen), respectively.

EPA evaluated whether there are any sources in South Carolina within 50 km of the State's border which could potentially be contributing to the exceedances in 2017 and 2018 at the Brunswick County and Haywood County monitors in North Carolina. With respect to the Haywood County monitor, there is only one source in South Carolina within 50 km of the State's border in the direction of the Haywood County monitor. This source, Milliken Enterprise Plant, is located approximately 12.5 km from the South Carolina border and emitted 4.25, 4.25, and 0.05 tons of SO_2 in 2015, 2016, and 2017, respectively. EPA believes that the Milliken Enterprise Plant is not contributing to the exceedances at the Haywood County monitor due to the source's distance of approximately 72.5 km from the monitor and the declining SO_2 emissions trend from 2015 to 2017. With respect to the Brunswick County monitor, there are two sources in South Carolina within 50 km of the State's border in the direction of the Brunswick County monitor. The two sources, Horry County Solid Waste Authority and Santee Cooper Myrtle Beach, are located approximately 31 km and 37 km, respectively, from the South Carolina border in the direction of the Brunswick County monitor. The Horry County Solid Waste Authority emitted 13.12, 13.12, and 12.88 tons of SO_2 in 2015, 2016, and 2017, respectively. The Santee Cooper Myrtle Beach facility emitted 0.02, 0.01, and 0.03 tons of SO_2 in 2015, 2016, and 2017, respectively. EPA believes that the Horry County Solid Waste Authority and the Santee Cooper Myrtle Beach facility are not contributing to the exceedances at the Brunswick County monitor due to the sources' distances of approximately 79 km and 85 km, respectively, from the monitor. Thus, after careful review of the State's assessment, supporting documentation, available monitoring data, and EPA's analysis suggesting that there are no sources in South Carolina within 50 km of the Brunswick and Haywood County DRR monitors which could be contributing to the exceedances at the Brunswick and Haywood County DRR monitors, EPA proposes to conclude that these monitoring data do not provide evidence of South Carolina contributing significantly to 2010 1-hour SO_2 violations in the neighboring states.

TABLE 8—2010 1-HOUR SO_2 99TH PERCENTILE CONCENTRATIONS FOR ROUND 4 DRR MONITORS WITHIN 50 km OF SOUTH CAROLINA LOCATED IN SURROUNDING STATES

County (state)	Round 4 monitored source	AQS site code	2017 99th percentile concentration (ppb)	2018 99th percentile concentration (ppb)	Approximate distance to SC border (km)
Buncombe (NC)	Duke-Asheville	370210037	16.6	9.8	32
Brunswick (NC)	CPI	370190005	82.5	55.1	50
Haywood (NC)	Evergreen	370870013	206.8	213.4	48

4. SIP-Approved Regulations and State Statutes Addressing SO_2 Emissions

a. State Submission

South Carolina identified State statutes and SIP-approved measures which help ensure that SO_2 emissions in the State do not significantly contribute to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state. SC DHEC lists the following SIP-approved South Carolina regulations which establish emission limits and other control measures for SO_2: Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration;* Regulation 61–62.5, Standard No. 7.1, *Nonattainment New Source Review;* Regulation 61–62.96, *Nitrogen Oxides (NO_X) and Sulfur Dioxide (SO_2) Budget Trading Program;* Regulation 61–62.97, *Cross-State Air Pollution Rule (CSAPR) Trading Program;* and Regulation 61–62.1, *Definitions and General Requirements.* In addition, SC DHEC promulgated Regulation 61–62.72, *Acid Rain,* to comply with the EPA's Acid Rain Program, enacted to reduce acid deposition by reducing SO_2 and NO_X emissions from fossil fuel-fired power plants. SC DHEC also notes that South Carolina's Pollution Control Act, SC Code Section 48–1–10 *et seq.,* and *State Agency Rule Making and Adjudication of Contested Cases,* SC Code Section 1–23–10 *et seq.,* provide for control of SO_2 emissions in the State.[33]

b. EPA Analysis

EPA believes that South Carolina's statutes and SIP-approved measures which establish emission limits, permitting requirements, and other control measures for SO_2 effectively address emissions of SO_2 from sources in the State. For the purposes of ensuring that SO_2 emissions at new major sources or major modifications at existing major sources in South Carolina do not contribute significantly to nonattainment or interfere with maintenance of the NAAQS, the State has a SIP-approved major source new source review (NSR) program. South Carolina's SIP-approved nonattainment NSR regulation is Regulation 61–62.5, Standard No. 7.1—*Nonattainment New Source Review,* which applies to the construction of any new major stationary source or major modification at an existing major stationary source in an area designated as nonattainment. The State's SIP-approved prevention of significant deterioration (PSD) regulation, Regulation 61–62.5, Standard No. 7—*Prevention of Significant Deterioration,* applies to the construction of any new major stationary source or major modification at an existing major stationary source in an area designated as attainment or unclassifiable or not yet designated. Regulation 61–62.1, Section II—*Permit Requirements* governs, among other things, the preconstruction permitting of modifications and construction of minor stationary sources in South Carolina. These major (*i.e.,* PSD and

[33] These South Carolina statutes are not approved into the State's implementation plan.

nonattainment NSR (NNSR)) and minor NSR rules ensure that SO_2 emissions due to major modifications at existing major stationary sources, modifications at minor stationary sources, and the construction of new major and minor sources in South Carolina will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in neighboring states.

5. Federally Enforceable Regulations Addressing SO_2 Emissions in South Carolina

a. State Submission

SC DHEC listed the following EPA rules which reduce SO_2 emissions from various sources: Acid Rain Nitrogen Oxides Emission Reduction Program; PSD/NNSR; Cap and Trade Programs for SO_2 under 40 CFR part 96; Regional Haze; Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements; Mercury and Air Toxics Standards; and the Cross-State Air Pollution Rule. The State notes that the overall effect of these rules has been a 56 percent reduction in SO_2 emissions nationally from 2010 to 2016.

b. EPA Analysis

EPA believes that the federal control measures for SO_2 which South Carolina lists in the State's June 2018 submission effectively address emissions of SO_2 from sources in the State and help ensure that SO_2 emissions from South Carolina do not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in another state.

6. Conclusion

EPA proposes to determine that South Carolina's June 25, 2018, SIP submission satisfies the requirements of prong 1 of CAA section 110(a)(2)(D)(i)(I). This proposed determination is based on the following considerations: DVs for South Carolina's AQS SO_2 monitors within 50 km of another state's border have remained well below the 2010 1-hour SO_2 NAAQS from 2015–2017; DVs for Georgia's and North Carolina's regulatory monitors within 50 km of South Carolina's border have 2017 DVs below the 2010 1-hour SO_2 NAAQS; modeling for the one South Carolina DRR source within 50 km of another state's border estimates impacts below the 2010 1-hour SO_2 NAAQS; modeling for DRR sources in the surrounding states of Georgia and North Carolina within 50 km of South Carolina indicates that the areas around these sources do not violate the 2010 1-hour SO_2 NAAQS; downward SO_2 emissions trends in South Carolina may suggest that the State's sources are not likely contributing to other states' ability to attain or maintain the 2010 1-hour SO_2 NAAQS; SO_2 emissions from South Carolina sources not subject to the DRR which emitted over 100 tons of SO_2 in 2017 are not likely interacting with SO_2 emissions from the nearest source in a bordering state in such a way as to contribute significantly to nonattainment in North Carolina; annual 99th percentile 1-hour SO_2 concentrations at the Buncombe County DRR monitor in North Carolina are well below the 2010 1-hour SO_2 NAAQS; and current South Carolina statutes and SIP-approved measures and federal emissions control programs adequately control SO_2 emissions from sources within South Carolina.

Based on the analysis provided by South Carolina in its SIP submission and EPA's analysis of the factors described in section III.C, EPA proposes to find that sources within South Carolina will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state.

D. EPA's Prong 2 Evaluation—Interference With Maintenance of the NAAQS

Prong 2 of the good neighbor provision requires state plans to prohibit emissions that will interfere with maintenance of a NAAQS in another state.

1. State Submission

In its June 25, 2018, SIP submission, SC DHEC states that South Carolina's SIP contains adequate provisions to prevent sources and emissions activities within South Carolina from interfering with maintenance of the 2010 1-hour SO_2 NAAQS in any other state based on the downward trend in SO_2 emissions in the State and the Southeast and on federal and state control measures. As discussed in section III.A, SC DHEC included statewide SO_2 emissions trends in its SIP submittal which show that SO_2 emissions have declined since approximately 2005 and are continuing to decline. SC DHEC included a figure showing SO_2 emissions trends in the Southeast from 2000 to 2016 and indicated that there is a consistent downward trend in SO_2 emissions over this time period. The State noted that these SO_2 emissions reductions are primarily due to federal regulations requiring pollution control devices and the decreased use of coal for electricity. In addition, as discussed in sections III.C.4 and III.C.5, SC DHEC has statutes and SIP-approved measures which address sources of SO_2 emissions in South Carolina and there are also federal measures that control SO_2 emissions in the State.

2. EPA Analysis

In *North Carolina* v. *EPA,* the D.C. Circuit explained that the regulating authority must give prong 2 ''independent significance'' from prong 1 by evaluating the impact of upwind state emissions on downwind areas that, while currently in attainment, are at risk of future nonattainment. *North Carolina* v. *EPA,* 531 F.3d at 910–911 (D.C. Cir. 2008). For the prong 2 analysis, EPA evaluated the emissions trends provided by South Carolina for the State and the Southeast, evaluated air quality data, and assessed how future sources of SO_2 are addressed through existing SIP-approved and federally enforceable regulations. Given the continuing trend of decreasing SO_2 emissions from sources within South Carolina and the fact that all areas in other states within 50 km of the South Carolina border have DVs attaining the 2010 1-hour SO_2 NAAQS, EPA believes that evaluating whether these decreases in emissions can be maintained over time is a reasonable criterion to ensure that sources within South Carolina do not interfere with its neighboring states' ability to maintain the 2010 1-hour SO_2 NAAQS.

Regarding SO_2 air quality trends in the southeastern United States, EPA notes that this region of the country has experienced an 82 percent decrease in the annual 99th percentile of daily maximum 1-hour averages between 2000 and 2017 based on 24 monitoring sites, and the most recently available data for 2017 indicates that the mean value at these sites was approximately 14 ppb.[34] When this trend is evaluated alongside the monitored SO_2 concentrations within South Carolina as well as the SO_2 concentrations recorded at regulatory monitors in the surrounding states of Georgia and North Carolina shown in Tables 6 and 7 of this document, EPA believes that emissions trends in South Carolina due to sources from within the State are not significantly different than the overall decreasing monitored SO_2 concentration trend in the Southeast. With respect to air quality data trends, the current 2015–2017 DVs for AQS SO_2 monitors both in South Carolina within 50 km of another state's border and in Georgia and North Carolina within 50 km of South Carolina's border are below the 2010 1-hour SO_2 NAAQS. Further, modeling results for DRR sources within 50 km of South Carolina's border both

[34] See *https://www.epa.gov/air-trends/sulfur-dioxide-trends.*

within the State and in the states of Georgia and North Carolina demonstrate attainment of the 2010 1-hour SO_2 NAAQS, and thus, demonstrate that South Carolina's largest point sources of SO_2 are not expected to interfere with maintenance of the 2010 1-hour SO_2 NAAQS in another state.

As discussed in sections III.C.4 and III.C.5, EPA believes that federal and State regulations and statutes that both directly and indirectly reduce emissions of SO_2 in South Carolina help ensure that the State does not interfere with maintenance of the NAAQS in another state. SO_2 emissions from future major modifications and new major sources will be addressed by South Carolina's SIP-approved major NSR regulations described in section III.C.4. In addition, South Carolina has a SIP-approved minor NSR permit program addressing small emission sources of SO_2. The permitting regulations contained within these programs are designed to ensure that emissions from these activities do not interfere with maintenance of the NAAQS in the State or in any other state.

3. Conclusion

EPA proposes to determine that South Carolina's June 25, 2018, SIP submission satisfies the requirements of prong 2 of CAA section 110(a)(2)(D)(i)(I). This determination is based on the following considerations: SO_2 emissions statewide from 2008 to 2014 in South Carolina have declined significantly; current South Carolina statutes and SIP-approved measures and federal emissions control programs adequately control SO_2 emissions from sources within South Carolina; South Carolina's SIP-approved PSD and minor source NSR permit programs will address future large and small SO_2 sources; current DVs for AQS SO_2 monitors both in South Carolina within 50 km of another state's border and in Georgia and North Carolina within 50 km of South Carolina's border are below the 2010 1-hour SO_2 NAAQS; and modeling for DRR sources within 50 km of South Carolina's border both within the State and in Georgia and North Carolina demonstrates that South Carolina's largest point sources of SO_2 are not expected to interfere with maintenance of the 2010 1-hour SO_2 NAAQS in another state. Based on the analysis provided by South Carolina in its SIP submission and EPA's supplemental analysis of the factors described in section III.C and III.D of this document, EPA proposes to find that emission sources within South Carolina will not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state.

IV. Proposed Action

In light of the above analysis, EPA is proposing to approve South Carolina's June 25, 2018, SIP submission as demonstrating that South Carolina's SIP has adequate provisions prohibiting any source or other type of emissions activity in the State from emitting any air pollutant in amounts that will contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in another state.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action for South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000) because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' However, EPA has determined that this proposed rule does not have substantial direct effects on an Indian Tribe because this proposed action is not approving any specific rule, but rather proposing to determine that South Carolina's already approved SIP meets certain CAA requirements. EPA notes that these proposed actions will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 11, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2019–07921 Filed 4–22–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[EPA–HQ–OW–2019–0166; FRL–9991–72–OW]

Interpretive Statement on Application of the Clean Water Act National Pollutant Discharge Elimination System Program to Releases of Pollutants From a Point Source to Groundwater

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of interpretive statement and request for comment.

SUMMARY: The Environmental Protection Agency (''EPA'') is issuing an Interpretative Statement addressing whether the Clean Water Act (''the CWA'' or ''the Act'') National Pollutant Discharge Elimination System (''NPDES'') permit program applies to releases of a pollutant from a point source to groundwater. This Interpretative Statement reflects the EPA's consideration of the public comments received in response to its February 20, 2018 **Federal Register** notice, as summarized immediately below. Informed by those comments and based on a holistic analysis of the statute, its text, structure, and legislative history, the Agency concludes that the CWA is best read as excluding all releases of pollutants from a point source to groundwater from NPDES program coverage, regardless of a hydrologic connection between the groundwater and jurisdictional surface water. The Interpretive Statement provides the EPA's full analysis and rationale supporting its interpretation and is available below and at *https://www.epa.gov/npdes/releases-point-source-groundwater*. Concurrently with issuing its interpretation of the CWA, the Agency is soliciting additional public input regarding what may be needed to provide further clarity and regulatory certainty on this issue.

DATES: Comments must be received or postmarked on or before June 7, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2019–0166, at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Scott Wilson, Office of Wastewater Management, Water Permits Division (MC4203M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–6087; email address: *wilson.js@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me? Tribes, states, local governments, the regulated community, and citizens interested in federal jurisdiction over activities that may release pollutants to groundwater may be impacted by this Interpretive Statement. Potentially affected entities include:

Category	Examples of potentially affected entities
States, Tribes, and Territories	State, Tribal, and Territorial water quality agencies and NPDES permitting authorities that may need to determine whether sources of pollutants should be addressed by standards or permitting actions.
Federal Agencies	Federal agencies with projects or other activities that may have releases that affect groundwater with connections to surface waters.
Industry	Industries that may have releases that affect groundwater with connections to surface waters.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by EPA's interpretation of the scope of the CWA NPDES program. Other types of entities not listed in the table could also be affected. If you have questions regarding the effect of this action on a particular entity, please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How can I get copies of this document and other related information? You may access this document electronically at *https://www.epa.gov/npdes/releases-point-source-groundwater* or at *https://www.federalregister.gov*. EPA has established an official public docket for receiving comments under Docket ID No. EPA–HQ– OW–2019–0166 which is accessible electronically at *http://www.regulations.gov* that will also contain copies of this **Federal Register** notice and the Interpretive Statement. The public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

II. February 2018 Request for Public Comment

On February 20, 2018, EPA requested public comment regarding whether EPA should review and potentially revise or clarify its previous statements concerning the applicability of the CWA NPDES permit program to pollutant releases from point sources that reach jurisdictional surface waters via groundwater that has a direct hydrologic connection to a jurisdictional surface water (the ''direct hydrologic connection theory''). 83 FR 7126, 7128 (Feb. 20, 2018). EPA asked for specific comment on questions related to CWA authority, other programs that address these releases, what issues needed further clarification, and what format EPA should pursue if it chose to revise or clarify its position. *Id.* EPA received over 50,000 comments in response to its request. Comments addressed the

specific questions raised by EPA as well as other pertinent topics. EPA received comments from a wide audience representing state governments, local governments, tribes, industry, environmental organizations, academia, and private citizens. *See* EPA Docket No. EPA–HQ–OW–2018–0063, *available at https://www.regulations.gov/docket?D=EPA-HQ-OW-2018-0063*.

Some commenters opposed the direct hydrologic connection theory on programmatic and legal grounds. These comments raised concerns regarding the activities that might be impacted if a NPDES permit is required for a release to groundwater with a direct hydrologic connection to jurisdictional surface water, including aquifer recharge, leaks from sewage collection systems, septic system discharges, treatment systems such as constructed wetlands, spills and accidental releases, manure management and coal ash impoundment seepage. These commenters also raised implementation concerns, including how a direct hydrologic connection would be defined and where monitoring or the point of compliance would be determined. Commenters opposed to the direct hydrologic connection theory raised a range of legal arguments, including that the theory was not grounded in the statutory text, pointing in particular to the absence of the term ''groundwater'' from sections authorizing the NPDES program and providing excerpts from the Act's legislative history.

Other commenters supported the direct hydrologic connection theory, raising concerns based on the prior examples of environmental impacts from releases to groundwater with a direct hydrologic connection to jurisdictional surface water, and the importance of the authority to regulate or prevent those releases pursuant to the CWA. These commenters asserted that the CWA's goal of protecting surface waters encompassed releases to groundwater that could reach jurisdictional surface waters, and that groundwater itself does not need to be jurisdictional under the CWA in order to regulate discharges that pass through groundwater and ultimately may reach surface water.

EPA has considered these comments, as well as the text, structure and legislative history of the CWA, and concludes that the interpretation expounded in the Interpretative Statement below is the best, if not the only, reading of the CWA, is more consistent with Congress's intent than other interpretations of the Act, and best addresses the question of NPDES permit program applicability for pollutant releases to groundwater within the authority of the CWA.

III. Interpretive Statement

Interpretive Statement

Subject: Application of the Clean Water Act National Pollutant Discharge Elimination System Program to Releases of Pollutants From a Point Source to Groundwater.

From: Matthew Z. Leopold (signed and dated April 12, 2019), General Counsel.

David P. Ross (signed and dated April 12, 2019), Assistant Administrator for Water.

To: Regional Administrators, Regions I–X.

This Interpretive Statement sets forth the Environmental Protection Agency's (''EPA'' or ''the Agency'') interpretation of the Clean Water Act (''the CWA'' or ''the Act'') National Pollutant Discharge Elimination System (''NPDES'') permit program's applicability to releases of pollutants from a point source to groundwater that subsequently migrate or are conveyed by groundwater to jurisdictional surface waters. For the reasons explained below, EPA concludes that the Act is best read as excluding all releases of pollutants from a point source to groundwater from NPDES program coverage and liability under Section 301 of the CWA, regardless of a hydrologic connection between the groundwater and a jurisdictional surface water. *See* 33 U.S.C. 1311(a), 1342.

This Interpretive Statement is the first instance in which the Agency has issued guidance focused exclusively on whether NPDES permits are required for releases of pollutants to groundwater that reach surface water. As described further below, there is a mixed record of prior Agency statements addressing this issue and a split in the federal circuit courts regarding the application of the NPDES permit program to releases of pollutants to groundwater that reach jurisdictional surface waters. Recent judicial decisions addressing this issue contribute to an evolving and increasingly confusing legal landscape in which permitting and enforcing agencies, potentially regulated parties, and the public lack clarity on when the NPDES permitting requirement set forth in sections 301 and 402 of the CWA may be triggered by releases of pollutants to groundwater. The absence of a dedicated EPA statement on the best reading of the CWA has generated confusion in the courts and uncertainty for EPA regional offices and states implementing the NPDES program, regulated entities, and the public. This Interpretive Statement is intended to advise the public on how EPA interprets the relevant provisions of the CWA.

This Interpretive Statement conveys to EPA's regional offices, states, and the public the Agency's reading of the applicability of sections 301 and 402 of the CWA to releases of pollutants to groundwater. It contains the Agency's most comprehensive analysis of the CWA's text, structure, legislative history, and judicial decisions that has been lacking in prior Agency statements on this issue. EPA thus herein provides clear guidance that balances the statute, case law, and the need for clarity on the scope of the CWA NPDES coverage, which has been recently expanded by judicial decision to potentially reach a new set of releases to groundwater that EPA has not historically regulated in the NPDES program. This Interpretive Statement provides important clarity to inform future permitting decisions and other actions; it neither alters legal rights or obligations nor changes or creates law.

In February 2018, the Agency sought public comment on whether the NPDES permit program applies to releases of pollutants to groundwater and whether the Agency should revise or clarify its position on this issue. *See* 83 FR 7126, 7128 (Feb. 20, 2018). Informed by those comments and based on a holistic analysis of the statute, its text, structure, and legislative history, the Agency concludes that the best, if not the only, reading of the CWA is that Congress intentionally chose to exclude *all* releases of pollutants to groundwater from the NPDES program, even where pollutants are conveyed to jurisdictional surface waters via groundwater. Congress purposely structured the CWA to give states the responsibility to regulate such releases under state authorities. And, as discussed further below, other federal statutes contain explicit provisions that regulate the release of pollutants into groundwater to provide significant federal authority to address groundwater pollution not provided by the NPDES permitting program. In accordance with Congress's intent, state and federal authorities are collectively available to provide protection for ground and surface water quality in those instances where direct CWA permitting authority is not applicable.

During the pendency of EPA's review of the public comments received, two petitions for certiorari were filed with the Supreme Court which posed the question of whether the CWA applies to releases of pollutants from a point source to groundwater that migrates to surface water. *See* Petition for Writ of

Certiorari, *Cty. of Maui* v. *Hawai'i Wildlife Fund, et al.* (''*County of Maui*''), No. 18–260 (Aug. 27, 2018); Petition for Writ of Certiorari, *Kinder Morgan Energy Partners, L.P.* v. *Upstate Forever* (''*Kinder Morgan*''), No. 18–268 (Aug. 28, 2018). Consistent with the United States' recommendation set forth in an amicus brief filed at the Court's request, the Supreme Court recently granted the petition for writ certiorari in *County of Maui,* an appeal of the Ninth Circuit's broad reading of the CWA. *Cty. of Maui,* No. 18–260 (S. Ct. cert granted on Feb. 19, 2019). Issuing this statement provides necessary clarity on the Agency's interpretation of the statute given the mixed record of prior Agency statements and a split in the federal circuit courts regarding this issue.

The interpretation contained herein differs from the direct hydrological connection theory, expressed in the United States amicus brief filed in the Ninth Circuit *County of Maui* proceeding, and the theories advanced by the parties in that case. The Agency does not agree with the respondents' and Ninth Circuit's view that the CWA's NPDES requirements can apply when a pollutant released from a point source migrates to navigable waters through groundwater. The differences between the direct hydrological connection theory and today's interpretation, and EPA's explanation for why the Agency is modifying and clarifying its interpretation, are detailed below. While the Agency disagrees with the reasoning of the Ninth Circuit's decision in *County of Maui,* as well as the reasoning of the Fourth Circuit in its *Kinder Morgan* decision, for reasons discussed further below, it will nonetheless apply the decisions of those courts in their respective circuits until further clarification from the Supreme Court. *See Hawai'i Wildlife Fund* v. *Cty. of Maui,* 886 F.3d. 737 (9th Cir. 2018); *Upstate Forever* v. *Kinder Morgan Energy Partners, L.P.,* 887 F.3d 637, 652 (4th Cir. 2018). Thus, the Agency's interpretation set forth herein applies at this time only outside of the Fourth and Ninth Circuits.[1]

[1] Neither the Ninth Circuit decision nor Fourth Circuit decision prohibits application of the Agency's interpretation expressed in this action in those circuits. *See National Cable Telecomms Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 982 (2005) (''A court's prior judicial construction of a statute trumps an agency construction otherwise entitled to Chevron deference only if the prior court decision holds that its construction follows from the unambiguous terms of the statute and thus leaves no room for agency discretion.''). As explained herein, by not applying this interpretation in the Ninth and Fourth Circuits, the Agency is simply choosing to maintain the status quo pending further clarification by the Supreme Court, after which time the Agency intends to follow with notice and comment rulemaking.

I. Factual Background

It is a fundamental principle of hydrology that many groundwaters and surface waters are linked through the hydrologic cycle. As the Agency has previously explained, the ''hydrologic cycle involves the continual movement of water between the earth and the atmosphere through evaporation and precipitation.'' EPA 440/6–90–004, *Citizen's Guide to Ground-Water Protection* (1990). Rain and snow fall to the earth, and the resulting water runs into surface waters, evaporates, is absorbed by plant roots, or infiltrates the ground's surface and moves downward to the saturated zone, ''the area in which all interconnected spaces in rocks and soil are filled with water,'' also known as groundwater. *Id.* at 1. In areas where the saturated zone occurs at the ground's surface, groundwater discharges into surface waters, eventually evaporating into the atmosphere to form precipitation and begin the hydrologic cycle again. *Id.*

The nature of the connection between groundwater and surface water is highly dependent on local climate, topography, geology and the type of groundwater formation at issue. Because of the often-slow movement of groundwater, pollutants tend to remain concentrated in the form of a plume. The speed and concentration at which pollutants move through groundwater depend on the amount and type of pollutant, its solubility and density, and the speed of the surrounding groundwater. The amount of a pollutant that is released into groundwater that will eventually reach surface water also varies and is dependent on both the characteristics of the pollutant itself as well as site-specific factors. In addition, the travel time and distance between polluted groundwater and surface water can allow for the reduction of the impacts of contamination on the surface water due to natural processes. These processes include, for example, dilution, oxidation, biological degradation (which can render pollutants less toxic), and the binding of materials to soil particles such that pollutants are adsorbed by surrounding soil before reaching surface water.

Many commenters responding to EPA's February 2018 **Federal Register** notice identified activities that have not generally been required to obtain an NPDES permit and might be impacted if a permit were required for a release to groundwater with a hydrologic connection to jurisdictional surface waters. Activities listed by commenters included aquifer recharge, leaks from sewage collection systems, septic system discharges, treatment systems such as constructed wetlands, spills and accidental releases, manure management, and coal ash impoundment seepage.

Septic systems, for example, generally operate by discharging liquid effluent into perforated pipes buried in a leach field, chambers, or other special units designed to slowly release the effluent into soil. The soil accepts, treats, and disperses wastewater as it percolates through the soil, but can in certain circumstances ultimately enter groundwater. Over 26 million homes in the United States employ septic systems to treat and dispose of household waste. As the Agency has explained, ''[r]ecycled water from a septic system can help replenish groundwater supplies; however, if the system is not working properly, it can contaminate nearby waterbodies.'' *See* EPA, *Septic Systems and Surface Water, https://www.epa.gov/septic/septic-systems-and-surface-water.* But even well-functioning septic systems can contribute pollutants such as nutrients to groundwater. In addition to household waste disposal, releases to groundwater are also employed as part of green infrastructure projects, including the management of stormwater. These projects release stormwater and recycled wastewater to the ground to recharge depleted aquifers and prevent or reduce runoff to surface waters. In arid western states experiencing low rainfall, states and municipalities use such surface infiltration of recycled wastewaters not only to replenish groundwater supplies, but also to mitigate salt water intrusion or abate land subsidence that can occur where groundwater is overly depleted.

To date, neither EPA nor states have generally required NPDES permits for these types of activities, and in the select instances where NPDES permits have been required for discharges from a point source that reach jurisdictional surface waters via groundwater, they have been based on site-specific factors.

II. The Clean Water Act

The objective of the CWA is ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). In order to meet that objective, Congress declared two national goals: (1) ''that the discharge of pollutants into the navigable waters be eliminated by 1985;'' and (2) ''that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish,

shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983. . . .'' *Id.* § 1251(a)(1)–(2). The CWA approaches restoration and protection of the Nation's waters as a partnership between states and the federal government, assigning certain functions to each in striking the balance of the statute's overall regulatory scheme. Congress expressly recognized the role that states would continue to exercise in preventing, reducing, and eliminating pollution: ''It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, reservation, and enhancement) of land and water resources[.]'' *Id.* § 1251(b). As the Supreme Court has explained, the statute ''anticipates a partnership between the States and the Federal Government,'' toward a shared objective of restoring and maintaining the integrity of the Nation's waters. *Arkansas* v. *Oklahoma,* 503 U.S. 91, 101 (1992).

To accomplish the Act's broad national objective, Congress established respective roles for the federal government and for states. As one means of accomplishing the Act's objective, Congress prohibited any ''discharge of any pollutant'' to ''navigable waters'' or to the ''contiguous zone or the ocean'' unless it is authorized by the statute, generally by a NPDES permit. 33 U.S.C. 1311(a) (''Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.''). The Act defines navigable waters as ''the waters of the United States, including the territorial seas.'' *Id.* § 1362(7). EPA's regulations have never defined ''waters of the United States'' to include groundwater.

The statute defines ''discharge of a pollutant'' as ''any addition of any pollutant to navigable waters from any point source'' or ''any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.'' 33 U.S.C. 1362(12). A point source is defined as ''any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.'' *Id.* § 1362(14).

Where there is a discharge of a pollutant from a point source to a water of the United States, termed herein a jurisdictional surface water, NPDES permits generally require permittees to meet numeric or narrative effluent limitations. *Id.* §§ 1311(a), 1342(a). Effluent limitations are defined as ''any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.'' *Id.* § 1362(11).

Courts have observed that nonpoint source pollution—the broad category of other forms of water pollution that do not fall within the point source definition and not defined under the Act—can be understood as ''all water quality problems not subject to Section 402,'' the portion of the statute requiring NPDES permits. *Nat'l Wildlife Fed'n* v. *Gorsuch,* 693 F.2d 156, 166 (D.C. Cir. 1982). In addition to the NPDES permitting program, as another means of accomplishing the Act's objective, Congress reserved to states their exclusive role in regulating nonpoint source pollution. *Am. Farm Bureau Fed'n* v. *EPA,* 792 F.3d 281, 289 (3rd Cir. 2015) (''States in turn regulate nonpoint sources. There is significant input and oversight from the EPA, but it does not regulate nonpoint sources directly.''); *see also Or. Natural Desert Ass'n* v. *U.S. Forest Serv.,* 550 F.3d 778, 780 (9th Cir. 2008) (''The CWA's disparate treatment of discharges from point sources and nonpoint sources is an organizational paradigm of the Act.'').

While the point and nonpoint source distinction is the quintessential inquiry related to the discharge of pollutants to surface waters, as explained further below, this inquiry is not relevant as applied to groundwater. Rather, the text, structure, and legislative history of the CWA demonstrate Congress's intent to leave the regulation of groundwater wholly to the states under the Act. *See, e.g., Village of Oconomowoc Lake* v. *Dayton Hudson Corporation,* 24 F.3d 962, 965 (7th Cir. 1994) (''[T]he Clean Water Act does not attempt to assert national power to the fullest . . . . Congress elected to leave [regulation of groundwaters] to state law[.]''); *Tenn. Clean Water Network* v. *TVA,* 905 F.3d 436, 439 (6th Cir. 2018) (''[T]he CWA is restricted to regulation of pollutants discharged into navigable waters . . . leaving the states to regulate pollution of non-navigable waters'' such as groundwater.).

III. EPA's Interpretation of the Clean Water Act National Pollutant Discharge Elimination System Program's Applicability to Releases of Pollutants to Groundwater That May Reach Jurisdictional Surface Waters

The CWA's definition of the ''discharge of [a] pollutant,'' 33 U.S.C. 1311(a), includes ''any addition of any pollutant to navigable waters from any point source,'' 33 U.S.C. 1362(12)(A). Because groundwater is not a ''navigable water[],'' *see* 33 U.S.C. 1362(7), the CWA does not regulate discharges to groundwater as such. But the question of whether a ''discharge'' within the statute's meaning has occurred when a pollutant is released from a point source, travels through groundwater, and ultimately migrates to navigable waters has generated confusion and uncertainty.[2]

Commenters to EPA's February 2018 **Federal Register** notice rely primarily on one of two interpretive possibilities for addressing this question. One approach is reflected in the court of appeals' decisions in *County of Maui* and *Kinder Morgan.* In those cases, the courts interpreted Section 1362(12)(A) as applying to discharges from a point source to navigable waters where the pollutant has travelled to the navigable water over or through another medium. On this view, to qualify as a discharge ''to navigable waters,'' a discharge via groundwater must, in the Ninth Circuit, be ''fairly traceable'' back to the point source and more than *de minimis, Cty. of Maui,* 886 F.3d at 746 n.2, and in the Fourth Circuit, ''must be sufficiently connected to navigable waters,'' *Kinder Morgan,* 887 F.3d at 651. Those courts and commentators who have endorsed these variations on a similar approach have differed in describing the type of connection that qualifies under the CWA, but they generally agree that a ''discharge of a pollutant'' may occur when a pollutant has been added to a navigable water via groundwater with some connection to the navigable water.

A second interpretive approach is reflected in the Sixth Circuit's decision in *Kentucky Waterways Alliance* v. *Kentucky Utilities Co.,* 905 F.3d 925 (6th

[2] This Interpretative Statement addresses the applicability of the CWA NPDES permitting requirements to the release of pollutants from a point source to groundwater that reach jurisdictional surface waters through hydrologically connected groundwater. It describes the movement of pollutants to and through groundwater as having been released from a point source. When the term ''discharge'' is used herein to reference pollutants being added to a surface water by or through groundwater, this does not connote or imply that a ''discharge of a pollutant'' or ''discharge'' has occurred under the CWA. *See* 33 U.S.C. 1362(12) (''discharge of a pollutant''), 1362(16) (''discharge'').

Cir. 2018). In that case, the court read the relevant statutory language as applying only where pollution has been added *directly* to navigable waters ''by virtue of a point-source conveyance,'' rather than through some other mechanism (such as groundwater). *Id.* at 934. Under this interpretation, sometimes described as the ''terminal point source'' theory, any intermediary between the point source and the navigable water means that a pollutant has not been discharged ''to [the] navigable water[] from [the] point source.''

EPA's interpretation differs from these two theories. The Agency's view is that the best, if not the only, reading of the statute is that all releases to groundwater are excluded from the scope of the NPDES program, even where pollutants are conveyed to jurisdictional surface waters via groundwater. This interpretation is appropriately tailored to releases to groundwater. On this view, because the CWA clearly evinces a purpose not to regulate groundwater, and because groundwater is extensively regulated under other statutory regimes, discussed further below in section VI.B, any circumstance in which a pollutant is released from a point source to groundwater is categorically excluded from the CWA's coverage. The interposition of groundwater between a point source and the navigable water thus may be said to break the causal chain between the two, or alternatively may be described as an intervening cause. Today's interpretation pertains to releases to groundwater and thus leaves in place the Agency's case-by-case approach to determining whether pollutant releases to jurisdictional surface waters that do not travel through groundwater require an NPDES permit. Whether a permit is required for such a release is necessarily a fact-specific inquiry, informed by the point source definition and an analysis of intervening factors.

In the Agency's view, the text, structure, and legislative history of the CWA, as well as the better-reasoned judicial decisions, support the legal conclusion that Congress intended to exclude *all* releases of pollutants to groundwater from NPDES program coverage, regardless of a hydrologic connection or conveyance to jurisdictional surface water. When attempting to interpret a statute, a court or agency cannot look to one single word or phrase, but instead must look to the text as a whole. *See Star Athletica, LLC* v. *Varsity Brands, Inc.,* 137 S. Ct. 1002, 1010 (2017); *Dole* v. *United Steelworkers of Am.,* 494 U.S. 26, 35 (1990) (''[W]e are not guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.''). While no single provision of the CWA expressly addresses whether pollutants discharged from a point source that reach jurisdictional surface waters through groundwater are subject to NPDES permitting requirements, when analyzing the statute in a holistic fashion, Congress's intent becomes evident: Congress did not intend for the NPDES program to address any pollutant discharges to groundwater, even where groundwater may be hydrologically connected to surface waters. Relevant legislative debate confirms that Congress fully understood the hydrologic connections that exist between groundwater and surface water, yet chose this jurisdictional line to strike the balance between state and federal responsibility for protection of the Nation's waters.

Congress was explicit where it intended the Act to apply to groundwater. It included references to groundwater in provisions aimed at providing information, guidance, and funding to states, to enable them to regulate pollutant discharges to groundwater. Explicit reference to groundwater, by contrast, is absent in the operative regulatory sections of the Act. Further, Congress refers to groundwaters exclusively as one unified category of waters; the Act is devoid of any indication that Congress viewed releases of pollutants to groundwater as susceptible to different treatment under the Act based on the presence or absence of a connection to surface water. The legislative history is unambiguous that Congress was aware of the potential for releases to groundwater to reach surface water, and nonetheless rejected proposed amendments seeking to require NPDES permits for discharges to groundwater. As with nonpoint source pollution, the statute's structure and references to groundwater therein are reflective of Congress's intent to leave regulation of releases of pollutants to groundwater with the states.

A. The operative, enforceable provisions of the Clean Water Act that make up the NPDES permitting program neither reference nor contemplate releases to groundwater.

The foundational definitional terms and provisions that establish the NPDES program extend *only* to discharges of pollutants to navigable waters, waters of the contiguous zone, and the ocean, *i.e.,* discharges to jurisdictional surface waters. The Act provides that a NPDES permit may be issued ''for the discharge of any pollutant.'' 33 U.S.C. 1342(a). The definition of discharge of a pollutant refers to ''any addition of any pollutant to *navigable waters* from any point source,'' or ''any addition of any pollutant to the *waters of the contiguous zone or the ocean* from any point source.'' *Id.* § 1362(12) (emphasis added). The Act thus explicitly refers to the addition of any pollutant to three of the four categories of waters referred to throughout the statute; the addition of any pollutant to groundwater—the fourth category—is notably absent. Congress specified which sections of the Act applied to which categories of waters: groundwater, navigable waters, contiguous zone waters, and the ocean. *See, e.g., id.* § 1254(a)(5) (setting forth provisions aimed at monitoring the quality of ''the navigable waters and ground waters and the contiguous zone and the oceans''); § 1314(a)(2) (requiring that the Administrator shall publish information on the ''factors necessary to restore and maintain the chemical, physical, and biological integrity of all navigable waters, ground waters, waters of the contiguous zone, and the oceans''). In other words, ''when Congress wanted certain provisions of the CWA to apply to groundwater, it stated so explicitly.'' *Umatilla Waterquality Protective Ass'n.* v. *Smith Frozen Foods,* 962 F. Supp. 1312, 1318 (D. Or. 1997).

Congress also elected to leave groundwater out of the definition of ''effluent limitations'' and related provisions. Effluent limitations are defined as ''any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources *into navigable waters, the waters of the contiguous zone, or the ocean,* including schedules of compliance.'' 33 U.S.C. 1362(11) (emphasis added). Similarly, section 304(g), establishing the requirement that EPA publish certain guidelines to assist states in implementing their NPDES program, provides that these guidelines will apply to control discharges to every form of water *except* groundwater. *See id.* § 1314(g) (providing that, for the purposes of assisting states in carrying out NPDES programs, EPA shall publish guidelines ''to control and prevent the discharge into the navigable waters, the contiguous zone, or the ocean'').

The absence of groundwater in the sections of the statute foundational to the NPDES permitting program is meaningful: ''[a] familiar principle of statutory construction . . . is that a negative inference may be drawn from the exclusion of language from one

statutory provision that is included in other provisions of the same statute.'' *Hamdan* v. *Rumsfeld,* 548 U.S. 557, 578 (2006). Here, Congress elected not to include groundwater in the definition of ''discharge of a pollutant''—the critical definition in determining whether a NPDES permit is required—nor did Congress include groundwater in the definition of ''effluent limitations,'' a primary vehicle in implementing the NPDES permitting requirement. *See Umatilla,* 962 F. Supp. at 1318 (''[T]hroughout the CWA, Congress appeared to have four categories of waters in mind—'navigable waters,' the contiguous zone, the ocean, and 'ground waters.' Only the first three of these . . . are included within the definition of 'discharge of a pollutant,' indicating that Congress did *not* consider discharges to groundwater to be discharges that would trigger the NPDES requirement.'').

Congress's intent to deliberately leave groundwater out of the definition of ''discharge of a pollutant'' is confirmed by the legislative history of the Act. In a hearing before the House Public Works Committee, Representative Leslie Aspin recommended that the term ''ground water'' be added to the operative NPDES provisions so that discharges to groundwater also would be covered by the statute, explaining that ''[s]ometimes a navigable water and ground-water source run into each other, or come close to each other, so that seepage from polluted ground-water source could pollute the navigable water[;] . . . [t]o say that the Federal Government can regulate the ecology of one, but not the other, is silly and counterproductive.'' Water Pollution Control Legislation–1971 (Proposed Amendments to Existing Legislation): Hearings before the H. Comm. on Pub. Works, 92nd Cong. 793 (1971) (remarks of Rep. Aspin) (emphasis added).

Representative Aspin went on to propose an amendment to regulate groundwater under the NPDES program by amending Title IV of the statute to include explicit references to groundwater and adding the term ''ground waters'' to the definition of ''discharge of pollutant'' found in Section 502(12). He explained that these amendments were necessary given the likelihood that polluted groundwater would contaminate jurisdictional surface waters:

> The amendment brings ground water into the subject of the bill, into the enforcement of the bill. Ground water appears in this bill in every section, in every title except title IV. It is under the title which provides EPA can study ground water. It is under the title dealing with definitions. But when it comes to enforcement, title IV, the section on permits and licenses, then ground water is suddenly missing. That is a glaring inconsistency which has no point. If we do not stop pollution of ground waters through seepage and other means, *ground water gets into navigable waters,* and to control only the navigable water and not the ground water makes no sense at all.

118 Cong. Rec. 10,666 (1972), 1 Leg. Hist. 589 (remarks of Rep. Aspin) (emphasis added). The amendments were rejected by a vote of 86 to 34. *Id.* at 597. The failure of a proposed amendment ''strongly militates against a judgment that Congress intended a result that it expressly declined to enact.'' *Gulf Oil Corp.* v. *Copp Paying Co.,* 419 U.S. 186, 200 (1974).

The only section in the extensive NPDES permitting provisions where discharges to groundwater are contemplated is section 402(b)(1)(D), which sets forth the requirements for EPA approval of state programs to assume NPDES authority. This section requires that to approve a state-submitted NPDES program, the Administrator must determine that adequate authority exists *within the state* to ''control the disposal of pollutants into wells.'' 33 U.S.C. 1342(b)(1)(D). The Fifth Circuit found this provision significant in rejecting EPA's prior view that it had authority to regulate groundwater pollution resulting from deep-well disposal, observing that ''[t]he simple requirement of § 402(b)(1)(D) that *state* permit programs have adequate authority to issue permits which control the disposal of pollutants into wells, which is not fleshed out elsewhere in the Act or mirrored in any of the sections setting forth the Administrator's powers, is entirely consistent'' with Congress's intention to ''stop short of establishing federal controls over groundwater pollution.'' *Exxon Corp.* v. *Train,* 554 F.2d 1310, 1324 (5th Cir. 1977).

The legislative history of 402(b)(1)(D) illuminates Congress's intent in the CWA to require states, but not the federal government, to regulate deep well disposal, which is consistent with its intent to leave regulation of *all* pollutant discharges to groundwater to states. The Senate Committee on Public Works report explains that, like the House, the Senate Committee rejected amendments to impose federal regulation over groundwater but included the provision in section 402(b)(1)(D) requiring states to maintain programs to regulate deep well disposal to encourage states to carry out such regulation. Specifically, the report explained that:

> Several bills pending before the Committee provided authority to establish Federally approved standards for groundwaters which permeate rock, soil, and other subsurface formations. Because the jurisdiction regarding groundwaters is so complex and varied from State to State, the Committee did not adopt this recommendation.
>
> The Committee recognizes the essential link between ground and surface waters and the artificial nature of any distinction. *Thus the Committee bill requires in section 402 that each State include in its program for approval under section 402 affirmative controls over the injection or placement in wells of any pollutants that may affect ground water.* This is designed to protect ground waters and eliminate the use of deep well disposal as an uncontrolled alternative to toxic and pollution control.
>
> The importance of groundwater in the hydrological cycle cannot be underestimated. Although only about 21.5 percent of our domestic, industrial[,] [and] agricultural supply comes directly from wells, it must be remembered that rivers, streams and lakes themselves are largely supplied with water from the ground—not surface runoff.

S. Rep. No. 414, 92d Cong., 1st. Sess. at 73 (1971), 2 Legislative History of the Water Pollution Control Act Amendments of 1972, at 1491 (emphasis added); *see also* 118 Cong. Rec. 10667 (1972), 1 Leg. Hist. 591 (remarks of Rep. Clausen) (opposing amendment to require NPDES permits for discharges to groundwater and stating that the House committee had ''recognized the need for control of disposal of pollutants into wells in order to protect our ground waters. Therefore, in section 402(b)(1)(D) we provided that the Administrator shall approve a State program unless he determines that authority does not exist to control the disposal of pollutants into wells.'').

The legislative history makes evident that Congress declined to extend coverage of the NPDES program to discharges to groundwater and did so with the understanding that releases of pollutants to groundwater often reached jurisdictional surface water and could affect its quality. For example, at a 1971 hearing before the Senate Public Works Committee, then EPA Administrator William Ruckelshaus requested that EPA be granted authority to regulate groundwater quality, explaining the basis for that request as follows:

> The only reason for the request for Federal authority over ground waters was to assure that we have control over the water table in such a way as to insure that our authority over interstate and navigable streams cannot be circumvented, so we can obtain water quality by maintaining a control over all the sources of pollution, be they discharged directly into any stream or *through the ground water table.*

Water Pollution Control Legislation–1971 (Proposed Amendments to

Existing Legislation): Hearings before the H. Comm. on Pub. Works, 92nd Cong. 230 (1971) (statement of Hon. William Ruckelshaus, Administrator, EPA) (emphasis added). This statement, before the same Senate Committee that rejected amendments to extend the scope of the NPDES program at the time of the passage of the Act, supports the conclusion that Congress was aware that contaminated groundwater could reach jurisdictional surface waters and nonetheless chose to leave releases to groundwater to state regulation in the CWA paradigm. As the Fifth Circuit observed in analyzing this legislative history, throughout the ensuing debate ''there is not the slightest hint that any Member thought the bill would grant the Administrator any power to regulate deep-well disposal or *any other form of groundwater pollution*. Instead, all the evidence points to precisely the opposite understanding.'' *Exxon,* 554 F.2d at 1329; *see also Kelley on behalf of Michigan* v. *United States,* 618 F. Supp. 1103, 1107 (W.D. Mich. 1985) (acknowledging the ''unmistakably clear legislative history . . . demonstrat[ing] that Congress did not intend the Clean Water Act to extend federal regulatory and enforcement authority over groundwater contamination'').

B. Explicit references to groundwater are found in sections of the Act that serve to provide information, guidance, assistance, or funding to states in regulating groundwater, and in sections of the Act addressing state programs to control nonpoint source pollution.

The Act's provisions explicitly addressing groundwater can be placed into two groups. Analysis of these two groups of statutory references reinforces Congress's intent to leave regulation of groundwater—no matter how hydrologically connected to surface water—to the states. First, the Act contains forward-looking sections aimed at gathering information that could inform subsequent legislation and current state efforts to regulate discharges to groundwater. Indeed, ''a clear pattern of congressional intent with respect to groundwaters emerges upon close examination of those sections of the Act that deal with the subject. That pattern is one of information gathering and encouragement of state efforts to control groundwater pollution—but not of direct federal control over groundwater pollution.'' *See Exxon,* 554 F.2d at 1322. Second, the Act contains sections addressing state programs to manage nonpoint source pollution, evidencing Congress's intent to retain states' lead role with respect to both nonpoint source and groundwater pollution. The provisions described below are reflective of Congress's intent that states retain responsibility for addressing groundwater pollution, and that the federal government's role would be to provide resources, both in the form of information, funding or other support, for states to take on this issue. These resources and incentives for state programs, like the NPDES program, are an important component of the CWA, but one in which states retain regulatory decision-making and authority and elect to what extent they chose to utilize federal support.

Groundwater is first mentioned in the statute in Title I, setting forth ''Research and Related Programs.'' This Title contains several provisions directing EPA to address groundwater pollution through information gathering and coordination with states, as opposed to through binding regulatory requirements found elsewhere in the Act. *See, e.g.,* 33 U.S.C. 1252, 1254. During the debate on the amendment to regulate discharges to groundwater through the NPDES program, Representative Donald H. Clausen, a member of the House Committee on Public Works and sponsor of the House bill, noted in explaining his opposition to the amendment that ''it was determined by the committee that there was not sufficient information on ground waters to justify the types of controls that are required for navigable waters.'' 118 Cong. Rec. 10667 (1972), 1 Leg. Hist. 591 (remarks of Rep. Clausen). He explained that the Committee recognized the need for additional information and research ''both in determining the effect of underground disposal of pollutants and the migration of such pollutions.'' *Id.* Thus, the Committee drafted ''broad research'' powers for EPA under Title I of the statute, and, based on that research, *in the future,* ''Congress might have a basis for determining the need and appropriately extending the controls of H.R. 11896 as they apply to navigable waters to ground waters if needed.'' *Id.*

Congress also included non-regulatory provisions focused on the protection of groundwater in Title II of the Act, in which Congress authorized EPA to make grants to states for the construction of publicly owned treatment works (POTWs). Of relevance here, Congress included a provision in section 202 authorizing increased funding for construction of POTWs if states provide a certificate indicating that the quantity of available groundwater will be ''insufficient, inadequate, or unsuitable for public use, including the ecological preservation and recreational use of surface water bodies,'' unless effluents from POTWs, after adequate treatment, are returned to the groundwater. 33 U.S.C. 1282(b)(2). This is an example of ''Congress employ[ing] the power of the federal purse to encourage protection by the states of underground waters.'' *Exxon,* 554 F.2d at 1323. Notably, this provision also links the quantity of available groundwater to ''ecological preservation and recreational use of surface water bodies,'' 33 U.S.C. 1282(b)(2), indicating Congress's decision to explicitly acknowledge and account for the connection between groundwater and jurisdictional surface waters when it chose to do so.

Title III of the CWA, ''Standards and Enforcement,'' also contains several provisions related to groundwater, each of which set forth non-regulatory information gathering requirements and provisions for guidance or funding to states. Section 304(a)(1) of the statute requires that the Administrator develop and publish water quality criteria, on, in pertinent part, the kind and extent of identifiable effects on health and welfare ''which may be expected from the presence of pollutants in any body of water, including ground water.'' 33 U.S.C. 1314(a)(1). Section 304(a)(2) requires that the Administrator develop and publish information on the factors necessary to restore and maintain the chemical, physical, and biological integrity of all navigable waters and ground waters. *Id.* § 1314(a)(2). Neither Section 304(a)(1) nor section 304(a)(2), however, create compliance obligations for individual dischargers. *E. I. Du Pont de Nemours & Co.* v. *Train,* 430 U.S. 112, 119 n.6 (1977) (''There is no provision for compliance with § 304, the guideline section.''). Rather, EPA's role in executing Section 1314(a) is to provide guidance to states. *City of Albuquerque* v. *Browner,* 865 F. Supp. 733, 738 (D.N.M. 1993) (''Section 304(a) of the Act requires EPA to develop criteria for water quality that reflect the latest scientific knowledge, and to provide those criteria to the States as guidance.''). As the Fifth Circuit observed, ''the absence of other provisions in the Act . . . for transforming this information into enforceable limitations, strongly suggests that Congress meant to stop short of establishing federal controls over groundwater pollution, at least for the time being.'' *Exxon,* 554 F.2d at 1325.

These provisions providing for support to states to regulate groundwater arise in the context of general informational support to states (sections 102, 104, and 304) and funding tied to protection of groundwater related to discharges from a specific type of

facility (section 202). 33 U.S.C. 1252, 1254, 1282, 1314. Significantly, Congress also explicitly included groundwater in provisions addressing states' programs for control of nonpoint source pollution. These provisions, including sections 208, 304(f), and 319, together make up the portions of the Act in which Congress addressed nonpoint source pollution—not through regulatory requirements, but through support for state programs. *Id.* §§ 1288, 1314(f), 1329.

Section 208 of the statute is an example of a provision where Congress was concerned about nonpoint source pollution impacting groundwater, which it was aware could also reach surface water. That section requires that states submit to EPA ''areawide waste treatment management plans,'' which must include a process to control the disposal of pollutants on land or in subsurface excavation to ''protect *both* ground and surface water quality.'' *Id.* § 1288(a), (b)(2)(K) (emphasis added). The statute provides that areawide waste treatment management plans shall include a process to identify mine-related sources of pollution, such as surface and underground mine runoff, and the plans must also set forth procedures and methods to control those sources of runoff. *Id.* § 1288(a), (b)(2)(G). Thus, Congress viewed underground mine runoff, *i.e.,* seepage to groundwater that could reach jurisdictional surface waters, as best dealt with for CWA purposes through an areawide waste treatment management plan for controlling nonpoint source pollution, rather than through the regulatory program under NPDES. *See also id.* § 1314(f) (directing the Agency to issue guidelines for identifying and evaluating types of nonpoint sources of pollutants, including ''the disposal of pollutants in wells or in subsurface excavations'').

Congress's intent to treat releases to groundwater as analogous to nonpoint sources, subject to control by states, is further evidenced by analyzing section 319 of the statute, entitled ''Nonpoint source management programs.'' Section 319 was added to the statute in 1987 and includes requirements and related funding provisions directed at states to control pollution from nonpoint sources to navigable waters. *Id.* § 1329 (codifying Water Quality Act of 1987, Pub. L. 100–4, 319, 100 Stat. 7, 52). Section 319 authorizes the Administrator to give priority in making grants where States have implemented or are proposing to implement programs to ''carry out ground water quality protection activities which the Administrator determines are part of a comprehensive nonpoint source pollution control program.'' *Id.* § 1329(h)(5)(D). In addition, section 319 contains a groundwater-specific grant provision in 319(i), ''Grants for Protecting Groundwater Quality,'' for the purpose of assisting states in ''carrying out groundwater quality protection activities'' that will ''advance the State toward implementation of a comprehensive nonpoint source pollution control program.'' *Id.* § 1329(i)(1). Activities that could be supported by the grants include activities ''to protect the quality of groundwater *and* to prevent contamination of groundwater from nonpoint sources of pollution.'' *Id.* (emphasis added). This and the other provisions discussed in this section, aimed at equipping states with information and funding needed to enact programs to protect groundwater quality, stand in contrast to the sections of the statute, discussed above, that set forth enforceable limitations as well as the NPDES permitting and related provisions and contain no explicit mention of groundwater.

IV. Comments Regarding Prior Agency Statements

The Agency has for the first time conducted a public process, initiated by EPA's February 2018 **Federal Register** notice, regarding prior Agency statements addressing this issue, and, in conjunction with that process, has conducted a more-substantial review of its prior statements than previously undertaken by the Agency. As the Agency stated in that notice, ''most of these statements were collateral to the central focus of a rulemaking or adjudication.'' 83 FR at 7127. In fact, most of these statements do not include any explanation for the Agency's previous interpretation of the Act. As described above, EPA is now clearly stating its position on this issue in a comprehensive manner that is consistent with the text and legislative history of the CWA.

As commenters pointed out, there have been a range of prior statements by the Agency that align with the legal position articulated in this Interpretive Statement. For example, in a number of documents discussed below, the Agency has stated simply that discharges to groundwater are not subject to the CWA, without any qualification. The Agency has reexamined these statements in light of what the Agency views as the more appropriate legal question at issue here—whether the CWA categorically excludes releases of pollutants to groundwater from coverage under the Act—without drawing a distinction between isolated groundwater and groundwater with a direct hydrologic connection to jurisdictional surface waters. Viewed through this legal lens, the statements discussed below in section (A) are highly relevant, and supportive of the interpretation of the statute explained in this Interpretive Statement.

A selection of these prior statements identified by commenters are summarized below. Many commenters observed that lack of consistent and comprehensive direction from EPA on this issue has led to inconsistent interpretation across the country and has created uncertainty for regulated entities and the public. Even where the Agency stated an interpretation, the Agency has not issued regulations or guidance focused clearly on this issue. Thus, courts have attempted to fill this void, but have issued conflicting decisions about whether these releases are covered by the CWA. EPA's adoption of a precise position on this issue and thorough explanation of the reasons why the Agency's position is the best, if not the only, reading of the CWA will provide certainty to EPA staff, state permitting authorities, and regulated entities as to how EPA interprets the statute.

A. Commenters' Citation of Examples of Prior Agency Statements Indicating Discharges to Groundwater Are Outside the Scope of the NPDES Program

In addressing EPA's request for comment on potential clarification of the Agency's prior statements, commenters pointed to certain instances in which the Agency stated that discharges to groundwater are not subject to the CWA, without any qualification. For example, in a 1973 EPA Office of General Counsel memorandum, EPA considered whether certain discharges to wells are subject to the NPDES program and stated that ''[u]nder § 502(12) the term 'discharge of a pollutant' is defined so as to include only discharges into navigable waters (or the contiguous zone or the ocean). Discharges into ground waters are not included.'' Memorandum from the U.S. EPA Acting Deputy Gen. Counsel to the U.S. EPA Region IX Reg'l Counsel 2–3 (Dec. 13, 1973). The Agency did not include any language indicating that, at that time, it viewed groundwaters as distinguishable based on their connection to jurisdictional surface waters. Notably, this memorandum was issued close-in-time to the passage of the CWA amendments creating the NPDES program and reflects the Agency's initial view of the statute's text, which has not been amended in

pertinent part since that time. *See also Ground Water Pollution from Subsurface Excavations,* EPA–430/9–73–012 at 131–35 (1973) (EPA report explaining that subsurface excavations, *e.g.,* lagoons, pits, basins, etc., used to store or dispose of pollutants can contaminate groundwater and that contamination can reach surface waters, without mentioning regulation under NPDES as one of several identified methods to address this contamination).

Commenters also pointed out that, in its brief in *Kelley on behalf of Michigan* v. *United States,* the United States argued that discharges to groundwater, *per se,* are excluded from the CWA, and applied that view to discharges to groundwater with a direct hydrologic connection to jurisdictional surface waters. 618 F. Supp. 1103 (W.D. Mich. 1985). In that case, Michigan alleged that certain toxic chemicals were released into the ground at a U.S. Coast Guard facility, that the chemicals contaminated the groundwater underlying the facility, and that the plume of contamination migrated and was discharged to a jurisdictional surface water. In its brief, the United States argued that ''Michigan cannot make these claims under the Clean Water Act since the Act does not regulate pollutant discharges onto soil or into underlying ground water.'' U.S. Mem. In Supp. of Rule 12(b) Mot. & In The Alternative for Summ. J. at 5, *Kelley on behalf of Michigan* v. *United States,* No. G83–630, 618 F. Supp. 1103 (W.D. Mich. 1985).

Commenters also pointed to a policy document issued during the Clinton administration which explicitly stated that it was unclear whether the CWA regulated discharges to groundwater with a direct hydrologic connection to jurisdictional surface water. President Clinton's Clean Water Initiative sought to update the CWA and stated that it was ''presently unclear whether a discharge to the ground or to ground water that rapidly moves into surface water through a 'direct hydrologic connection' between the point of discharge and the surface water is subject to NPDES regulation.'' *President Clinton's Clean Water Initiative* at 104, EPA 800–R–94–001 (Feb. 1994). To address this, EPA suggested that the ''CWA should be amended to . . . [c]onfirm and clarify that a point source discharge to ground or to ground water that has a direct hydrological connection with surface waters is subject to regulation as a NPDES point source discharge . . . .'' *Id.* at 105; *see also* EPA 100–R–93–001 at 1–27, *Final Comprehensive State Ground Water Protection Guidance* (Dec. 1992) (stating that ''[w]hile a number of States have incorporated ground water discharges into their NPDES permits and pretreatment requirements, there is no national requirement to do so'').

Commenters also cited to instances in permitting proceedings where EPA indicated that NPDES permits are not required for discharges to groundwater, without also referring to the direct hydrologic connection theory. In a response to comments document on an NPDES pesticide general permit, EPA explained that one commenter requested that the permit ensure that discharges do not affect groundwater. EPA, *Response to Public Comments, EPA NPDES Pesticide General Permit* at xxii (Oct. 31, 2011). EPA responded and clarified that ''the Clean Water Act's NPDES program, under which EPA issued the [pesticide general permit], is for the control of discharges to waters of the United States. Generally, discharges to groundwater are not regulated under the NPDES program; rather, discharges to groundwater are regulated under Safe Drinking Water Act along with any additional protections that may be incorporated in FIFRA regulations.'' *Id.* EPA did not qualify this statement with any discussion of discharges to groundwater with a direct hydrologic connection to surface water. *See also* EPA, Fact Sheet, Draft General Permits for Stormwater Discharges Systems from Small Municipal Separate Sewer Systems in Massachusetts at 18 (Sept. 30, 2014) (''NPDES permits are applicable for point source discharges to waters of the U.S.; discharges to groundwater are not addressed in the NPDES program and as such are not addressed by this permit.'').

Finally, commenters also noted that EPA has not comprehensively explained its previous interpretation in a key document that permit writers and regulated entities frequently look to for guidance on the NPDES program. EPA's NPDES Permit Writers' Manual (NPDES Manual) describes the statutory and regulatory framework of the NPDES program and examines technical considerations for developing NPDES permits. U.S. EPA, NPDES Permit Writers' Manual vii (2010). While the NPDES Manual is designed as a comprehensive reference on the program for permit writers, it only briefly mentions EPA's prior interpretation:

> The CWA does not give EPA the authority to regulate ground water quality through NPDES permits. If a discharge of pollutants to ground water reaches waters of the United States, however, it could be a discharge to the surface water (albeit indirectly via a direct hydrological connection, *i.e.,* the ground water) that needs an NPDES permit.

Id. at 1–7. The NPDES Manual does not elaborate on this statement or provide guidance on how this interpretation should be implemented.

B. Commenters' Citation of Examples of Prior Agency Statements Indicating Discharges to Groundwater With a Direct Hydrologic Connection to Surface Water are Subject to NPDES Requirements

As described in the February 2018 **Federal Register** notice soliciting public comment on this issue, EPA has articulated its previous position that discharges to groundwater with a direct hydrologic connection to jurisdictional surface waters are subject to the CWA. 83 FR at 7127 (''EPA has previously stated that pollutants discharged from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to the jurisdictional water may be subject to CWA permitting requirements.''). Commenters noted that the Agency has, in several public documents, including rulemakings, permits, letters, and briefs filed on EPA's behalf by the Department of Justice, indicated that NPDES permits are required for discharges to groundwater that have a direct hydrologic connection to jurisdictional surface waters. *See, e.g., id.* (listing Agency statements in several rulemaking preambles); Federal Appellees' Response Brief at 48, *Greater Yellowstone Coal.* v. *Lewis,* No. 09–35729, 628 F.3d 1143 (9th Cir. 2010) (''Groundwater is not directly regulated by the Clean Water Act . . . . Nonetheless, EPA has consistently interpreted the Act to cover discharges into groundwater that have a direct hydrologic connection to surface water.''); Final General NPDES Permit for Concentrated Animal Feeding Operations (CAFO) in Idaho ID–G–01–0000, 62 FR 20,178 (1997) (''[T]he Clean Water Act does not give EPA the authority to regulate groundwater quality through NPDES permits. The only situation in which groundwater may be affected by the NPDES program is when a discharge of pollutants to surface waters can be proven to be via groundwater . . . the permit requirements . . . are intended to protect surface waters which are contaminated via a groundwater (subsurface) connection.''); EPA, Memorandum from Director, Office of Solid Waste to Waste Management Division Directors (1995) (''In addition, such groundwater discharges are subject

to CWA jurisdiction, based on EPA's interpretation that discharges from point sources through groundwater where there is a direct hydrologic connection to nearby surface waters of the United States are subject to the prohibition against unpermitted discharges, and thus are subject to the NPDES permitting requirements.''); EPA, *In the Matter of Bethlehem Steel Corp,* UIC Appeal Nos. 85–8 & 86–13 (1989) (EPA ''declines to exercise CWA jurisdiction over injection wells (except those that inject into ground water with a physically and temporally direct hydrologic connection to surface water).''). However, each of these statements is included in preambles to rules or in permits where the complex jurisdictional issue of releases of pollutants to groundwater were not the central focus. In other words, these statements were collateral to the central issues addressed in the documents in which they are included.

Commenters highlighted one preamble—to a proposed rule that applied to only one category of dischargers—in which EPA discussed its prior interpretation in some detail. In a proposed rule revising the NPDES permit requirements and effluent limitation guidelines for CAFOs, EPA proposed national requirements for certain CAFOs to address potential discharges to jurisdictional surface waters via groundwater that has a direct hydrologic connection to jurisdictional surface waters. 66 FR 2960 (Jan. 12, 2001). In the preamble to this proposed rule, EPA explained its interpretation of the Act as applying to these types of discharges. *Id.* at 3015–20. Notably, EPA did not engage in a detailed analysis of the Act's text, structure, and legislative history in the 2001 preamble that has now led the Agency to the position articulated in this Interpretive Statement. Moreover, EPA *did not finalize* these proposed requirements for certain CAFOs and explained in the preamble to the final rule that ''the factors affecting whether such discharges are occurring . . . are so variable from site to site that a national technology-based standard is inappropriate.'' 68 FR 7176, 7216 (Feb. 12, 2003).[3]

C. Rationale for the Agency's Rejection of Commenters' Alternative Interpretations of the CWA

Commenters to EPA's February 2018 **Federal Register** notice offered extensive legal arguments both supporting the Agency's previous direct hydrologic connection theory, and as a basis for rejecting that theory. Some commenters recommending the Agency retain the direct hydrologic connection theory cited to the purpose of the statute and the definition of ''discharge of a pollutant'' as requiring that the Agency construe the statute as covering releases of pollutants to groundwater that reach jurisdictional surface waters through a direct hydrologic connection. They argued that the definition of ''discharge of a pollutant'' is broad, and asks only whether the pollutant travels from a point source to a jurisdictional surface water; if so, a NPDES permit is required. Commenters in favor of the Agency's rejection of the direct hydrologic connection theory asserted that the theory is atextual and inconsistent with the overall statutory scheme and legislative history of the Act. Some of these commenters offered an alternative theory of jurisdiction that limits the scope of the CWA to discharges of a pollutant from a point source or series of point sources that carry the pollutant directly into the water of the United States. In other words, they asserted that pollution must pass through an unbroken chain of point sources for a ''discharge of a pollutant'' to have occurred, sometimes referred to as the ''terminal point source'' theory. The Agency's position articulated herein differs from both the direct hydrologic connection theory and the terminal point source theory, as explained below. EPA believes its reading of the statute—which is based on the statute as a whole and not a single definition viewed in isolation—is most consistent with Congress's intent. It is also carefully tailored to the specific issue of releases of pollutants to groundwater which has generated confusion among courts, states, regulated entities, and the public.

Many environmental organizations that commented on EPA's February 2018 **Federal Register** notice urged the Agency to retain the direct hydrologic connection theory articulated in prior Agency statements. The Agency notes that it is maintaining several elements of that position—that groundwater is not a water of the United States and that groundwater is not a point source. The Agency's brief before the Ninth Circuit in the *County of Maui* proceeding stated that it ''[did] not contend that groundwater is a point source, nor [did it] contend that groundwater is a water of the United States regulated by the Clean Water Act.'' Brief for the United States as Amicus Curiae at 2, *Cty. Of Maui,* No. 15–17447, 886 F.3d. 737.

EPA's interpretation here departs from the position the Agency took in the *County of Maui* amicus brief on the application of the definition of ''discharge of a pollutant'' to releases of pollutants into groundwater. The amicus brief, as well as the commenters urging the Agency to retain the direct hydrologic connection theory, failed to take into account Congress's unique treatment of groundwater in the CWA when interpreting the definition of discharge of a pollutant. The Agency's previous interpretation that a release of a pollutant from a point source to groundwater that is conveyed to jurisdictional surface waters could be the functional equivalent of a release to jurisdictional surface waters thus was premised on viewing releases of pollutants to groundwater through the NPDES point source paradigm rather than viewing such releases in light of Congress's specific approach to groundwater under the CWA.

In arguing that the direct hydrologic connection theory is consistent with the Act, the Agency's *County of Maui* amicus brief, like some commenters, recognized that Congress drew a line between regulation of discharges to groundwater and regulation of discharges to jurisdictional surface water. EPA's amicus brief asserted that *Maui* ''emphatically is not a case about the regulation of groundwater'' and ''[i]nstead it is about the regulation of discharges of pollutants to waters of the United States.'' Brief for the United States as Amicus Curiae at 21. However, this approach takes insufficient account of the explicit treatment of groundwater under the CWA, as reflected in the statute's text, structure, and legislative history. In the Agency's view, releases to groundwater should not be distinguished based on the connection (or lack thereof) between groundwater and jurisdictional surface waters. The text, a holistic analysis of the statute, and the legislative history indicate that Congress's intent was to categorically exclude groundwater from coverage of the permitting provisions of the Act and to leave regulation of groundwater to the states, irrespective of the type of groundwater formation and whether it allows for discharge to jurisdictional surface waters or the directness of such a conveyance. The direct hydrologic connection theory upsets the careful balance that Congress struck between the states and the federal government by pushing a category of pollutant discharges from the state-regulated paradigm to the point source, federally controlled, program.

The *County of Maui* amicus brief, and some commenters urging that EPA

[3] In reviewing this regulation, the Second Circuit did note that NPDES authorities still had the power to impose groundwater related requirements on a case-by-case basis. *Waterkeeper Alliance* v. *EPA,* 399 F.3d 486, 514 & n. 26, 515 (2d Cir. 2005).

retain the direct hydrologic connection theory, also erred by improperly equating releases of pollutants to groundwater with releases of pollutants from a point source to surface water that occur above ground. The statute and its legislative history indicate that Congress intended for all discharges to groundwater to be left to state regulation and control, ending any potential for federal permitting obligations once the pollutant enters groundwater, regardless of any future contribution of any modicum of pollutants to jurisdictional surface waters. Thus, the statute does not support analogizing pollutants discharged from a point source to groundwater that migrate to jurisdictional surface water to ''discharges of pollutant[s] [that] have moved from a point source to navigable waters over the surface of the ground or by some other means.'' Brief for the United States as Amicus Curiae at 14, *Cty. Of Maui,* No. 15–17447, 886 F.3d. 737.

As the Act's legislative history in particular demonstrates, Congress recognized the complex and highly-localized nature of releases to groundwater, that additional research and understanding of the interactions between surface and groundwater are needed, and determined that states, rather than EPA, are best positioned to regulate such releases. Today's interpretation pertains to releases to groundwater and thus leaves in place the Agency's case-by-case approach to determining whether pollutant releases to jurisdictional surface waters that do not travel through groundwater require an NPDES permit. Whether a permit is required for such a release is necessarily a fact-specific inquiry, informed by the point source definition and an analysis of intervening factors. EPA and authorized states have exercised that judgment on a case-by-case basis.[4] It is unnecessary to posit a categorical rule with respect to fact patterns such as those described in footnote 4 in this Interpretive Statement because, as explained above, the statute categorically excludes releases to and from groundwater from the permitting requirements of the Act irrespective of the directness of the hydrological connection.[5]

Finally, the *County of Maui* amicus brief and some commenters improperly rely on the broad goal of the Act to justify applying the definition of ''discharge of a pollutant''—which exclusively addresses point source discharges to navigable, ocean, and contiguous zone waters—to releases of pollutants to groundwater. The brief argues that reading the statute as excluding discharges from a point source to groundwater ''would allow dischargers to avoid responsibility simply by discharging pollutants from a point source into jurisdictional surface waters through any means that was not direct.'' Brief for the United States as Amicus Curiae at 20. This position fails to give sufficient weight to the structure and legislative history of the statute indicating that Congress intended in the CWA to leave regulation of all releases of pollutants to groundwater to states, in pursuit of the overall objective of the statute. In addition, views about the general purpose of the Act should not override Congress's evident intent not to regulate discharges to groundwater of any kind. As the Supreme Court has explained, ''the textual limitations upon a law's scope are no less a part of its 'purpose' than its substantive authorizations.'' *Rapanos* v. *United States,* 547 U.S. 715, 752 (2006) (plurality op.). Further, excluding these releases from the scope of the NPDES program does not equate to no protection for ground and surface waters; rather, as described further below, states will continue to exercise their authority over these waters as will other federal programs.

Some commenters placed significance on a statement in the government's *County of Maui* amicus brief that the direct hydrologic connection theory was the Agency's ''longstanding position.'' Brief for the United States as Amicus Curiae at 5. However, as the full suite of public comments reveal, there have in fact been a range of prior statements by the Agency, some of which align with this Interpretive Statement, that the Agency has now considered in its analysis for the first time. Lack of consistent and comprehensive direction from EPA on this issue has led to inconsistent interpretation across the country and has created uncertainty for regulated entities. Even where the Agency has stated an interpretation, the Agency has not issued regulations nor formal guidance focused on and explaining the basis for the position. As noted above, this Interpretive Statement contains the Agency's most comprehensive analysis of the CWA's text, structure, legislative history and judicial decisions that has been lacking in prior Agency statements on this issue. In so doing, today's statement establishes a firm legal foundation for regulatory decisions by EPA and states administering CWA programs and clear guidance for the courts.

Some commenters to EPA's February 2018 **Federal Register** notice highlighted certain factual scenarios, such as movement of groundwater through a sub-surface lava tube or karst network that may resemble formations which courts have found to be point sources. *See* Nat'l Groundwater Assoc. Comments at 2 (describing certain groundwater formations, such as ''lava tube openings, cave or conduit openings (including karst conduit networks), or other geologic features'' that ''function as natural pipelines capable of transporting water, effluents, and

[4] For example, in the 2012 criminal case against Robert Armstrong and RCA Oil and Gas LLC, the indictment states that the defendant ''using a backhoe, breached the wall of the reservoir causing the wastewater to flow into Rockcamp Run.'' *United States* v. *Armstrong,* No. 2:12–cr–243, ECF–1, at *4 (S.D. Ohio 2013). In the 2012 criminal case against Chamness Technology Inc., Attachment A to the Plea Agreement states that a hose from a lagoon to a rotating water irrigator became unhooked and was observed ''discharging dark, foamy, and odiferous liquid into a wooded draw which flowed downward into the Palestine Creek.'' *United States* v. *Chamness Tech., Inc.,* No. 4:14–cr–149, ECF–8–1, at *2 (S.D. Iowa 2013). In the 2014 criminal case against Freedom Industries, the Stipulation of Facts in the Plea Agreement states that the chemical at issue leaked from a tank, ''breached containment, including a dike wall, ran down the riverbank and discharged into the Elk River at two discernible, confined and discrete channels or fissures.'' *United States* v. *Freedom Industries, Inc.,* No. 2:14–cr–275, ECF–9, at *23–*24 (S.D. W.Va. 2016). EPA's regulations for concentrated animal feeding operations (CAFOs) prohibit discharges from manure storage lagoons unless the lagoon is properly designed and the discharge is the result of a 24-hour, 25-year storm. *See* 40 CFR part 412. EPA has taken action against CAFOs with discharges that do not satisfy these requirements. *See United States* v. *Meadowvale Dairy,* No. 5:16-cv-4016, ECF–2, at *10 (N.D. Iowa 2017) (Complaint alleging that an ''inspection at Meadowvale North . . . observed manure laden process wastewater flowing from the northern portion of [the basin] into Unnamed Tributary East'').

[5] The Agency recognizes that the Sixth Circuit recently adopted and applied a rationale similar to the terminal point source theory. In *Kentucky Waterways Alliance,* the Sixth Circuit rejected environmental groups' argument that coal ash ponds that released pollutants into groundwater which flowed through a karst network to a jurisdictional surface water constituted a discharge of a pollutant under the statute. 905 F.3d 925 (6th Cir. 2018). The environmental groups argued that the releases required a NPDES permit, relying on both the direct hydrologic connection theory, which the court rejected as contrary to the text and structure of the statute, and, in the alternative, asserting that the discharge of coal ash pollutants from the karst formation was itself a point source discharge. On the latter claim, the court determined that neither groundwater itself, nor groundwater flowing through a karst network, is a point source. *Id.* at 932–33. The court recognized that groundwater ''may indeed be a 'conveyance,' '' but concluded that ''karst . . . is neither discernible, discrete, nor confined.'' *Id.* at 933. Application of the Agency's interpretation of the Act described herein—that all releases from a point source to groundwater that reach a jurisdictional surface water are, as a legal matter, categorically outside of the NPDES program—leads to the same result as the Sixth Circuit, but based on a different rationale. Nothing in the *Kentucky Waterwaters Alliance* decision would preclude application of the Agency's interpretation within the Sixth Circuit.

contaminants from one point to another point and behave similarly to manmade pipes conveying fluids''). In accordance with EPA's interpretation of the statute, because releases of pollutants from a point source to groundwater are categorically excluded from the scope of the NPDES program, even if those pollutants reach jurisdictional surface waters, it is immaterial whether pollutants subsequently travel through groundwater in a manner resembling point source discharges. EPA's position is that, in accordance with the best, if not the only, interpretation of the statute, releases to groundwater are not subject to the point source analysis, *i.e.,* the CWA Section 301(a) prohibition, because the statute does not cover such releases. Accordingly, groundwater cannot be deemed a point source.

Given the indications in both the text of the statute as well as the legislative history that Congress intended to categorically leave regulation of groundwater to the states, these factual distinctions are of no legal significance. Applying the commenters' theory that releases to groundwater are excluded because the physical characteristics of groundwater are dissimilar to what some courts have found to be point sources is unnecessary. The numerous provisions in the Act linking groundwater to nonpoint source pollution, and the absence of discussion of groundwater in any of the regulatory sections of the CWA, provide ample support that in establishing the NPDES program Congress intended to leave regulation of *all* releases of pollutants to groundwater, akin to nonpoint source pollution, to the states.[6]

V. Case Law

Over the 46-year history of the CWA, numerous courts have grappled with the question that EPA addresses with this interpretation. Many courts, including the Fifth, Sixth, and Seventh Circuit Courts of Appeals, have looked to both the language of the Act and the legislative history and determined that the Act excludes from its regulatory requirements all pollutant discharges to groundwater, regardless of whether that groundwater is hydrologically connected to jurisdictional surface waters. Other courts, including the Fourth and Ninth Circuit Courts of Appeals, have cited the broad, protective goals of the Act, and applied in isolation the definition of ''discharge of a pollutant'' to releases of pollutants from point sources to groundwater that migrate to jurisdictional surface waters. Upon this premise, these courts have then found that, upon meeting the courts' respective tests for assessing the connectedness between the groundwater and jurisdictional surface waters, such releases are subject to NPDES requirements. The Agency believes that these interpretations departed from the text and history of the CWA, and finds the decisions of the Fifth and Seventh Circuit more persuasive and true to Congress's intent in enacting the statute.

The decisions of other circuits which have taken a different approach than the Fourth and Ninth Circuit—taking a holistic view of the statute and accounting for the legislative history—are informative. In the 1977 *Exxon* v. *Train* decision, the Fifth Circuit conducted an extensive analysis of the text, structure, and legislative history of the statute, and held that the Act did not give EPA authority to regulate certain releases of pollutants into groundwater. There, EPA had asserted authority to require NPDES permits for subsurface disposal into deep wells where an entity already had a permit for surface discharge. 554 F.2d at 1319. The Agency did not argue that a permit was required because disposal was an addition of a pollutant to ''navigable waters,'' *id.* at 1318 n.17, but instead that its authority was premised on the presence of an existing jurisdictional surface water discharge, *id.* at 1320. In analyzing the question of EPA's authority over deep well disposal, the court noted that ''EPA has not argued that the wastes disposed of into wells here do, or might, 'migrate' from groundwaters back into surface waters that concededly are within its regulatory jurisdiction,'' and thus, the court ''express[ed] no opinion on what the result would be if that were the state of facts.'' *Id.* at 1312 n.1.

However, in holding that EPA's assertion of authority was unsupported by the text and legislative history of the statute, the court made two observations that are relevant to the broader question of regulation of any discharges to groundwater. First, that the court's construction was true ''to Congress' intention not to interfere with existing state controls over groundwater'' generally, given the complex, state-specific nature of groundwater regulation. And second, that the legislative history of the Act gives not ''the slightest hint that any Member thought the bill would grant the Administrator any power to regulate deep-well disposal *or any other form* of groundwater pollution.'' *Id.* at 1329 (emphasis added).

In *Rice* v. *Harken Exploration Co.,* the Fifth Circuit addressed a factual scenario where the plaintiff's Oil Pollution Act (OPA) claim was premised on pollutant discharges to groundwater migrating to and polluting jurisdictional surface waters. In analyzing the merits of that claim, the court relied on *Exxon* to determine whether the OPA's requirements governing discharges to ''navigable waters of the United States'' apply to discharges to groundwater that reach such surface waters. There, the plaintiffs alleged that groundwater under their land was contaminated by pollutants discharged by Harken Exploration's oil and gas operations, and that those pollutants seeped from the groundwater into several bodies of surface water, in violation of the OPA. *Rice* v. *Harken Exploration Co.,* 250 F.3d 264, 265–66, 270 (5th Cir. 2001).

Due to the lack of case law construing the term ''navigable waters of the United States'' in the OPA context, the court's analysis focused on cases construing the scope of the CWA, given the court's view that the use of the term ''navigable waters'' in both statute was analogous. *Id.* at 267–68 (''The legislative history of the OPA and the textually identical definitions of 'navigable waters' in the OPA and the CWA strongly indicate that Congress generally intended the term 'navigable waters' to have the same meaning in both the OPA and the CWA.''). The court recognized that ''[i]n *Exxon,* we held that the legislative history of the CWA belied any intent to impose direct federal control over any phase of pollution of subsurface waters.'' *Id.* at 269. However, acknowledging that *Exxon* addressed the specific question of CWA regulation of deep-well disposal, the court explained that ''[t]his Court has not yet decided whether discharges into groundwater that migrate into protected surface waters are covered'' under the CWA or the OPA. *Id.* at 271. Relying on its CWA analysis in *Exxon,* and the analogous absence of any indication that Congress intended to regulate any type of groundwater under the OPA, the Fifth Circuit held that ''a generalized assertion that covered surface waters will eventually be affected by remote, gradual, natural seepage from the contaminated groundwater'' was outside the scope of the OPA in order ''to respect Congress's decision to leave the

[6] While not the conclusion reached herein, some courts have resolved these issues by deeming releases of pollutants that have seeped into groundwater and subsequently reached surface waters to be nonpoint source pollution. *See Sierra Club* v. *El Paso Gold Mines, Inc.,* 421 F.3d 1133, 1141 n. 4 (10th Cir. 2005) (''Groundwater seepage that travels through fractured rock would be nonpoint source pollution which is not subject to NPDES permitting.''); *Penn Environment* v. *PPG Indus., Inc.,* 964 F. Supp. 2d 429, 455–56 (W.D. Pa. 2013) (''[A] discharge occurring through the migration of groundwater and soil runoff . . . represents 'nonpoint source' pollution.'').

regulation of groundwater to the States.'' *Id.* at 272.

In *Village of Oconomowoc Lake* v. *Dayton Hudson Corporation,* the Seventh Circuit squarely addressed the issue of point source discharges that reach jurisdictional surface waters through groundwater, and concluded that ''[n]either the Clean Water Act nor the EPA's definition [of waters of the United States] asserts authority over ground waters, just because these may be hydrologically connected with surface waters.'' 24 F.3d at 965. In that case, a municipality in Wisconsin filed a CWA citizen suit claiming that a NPDES permit was required for a waste retention pond at a Target Stores distribution center, due to potential seepage of waste into groundwater, which could reach jurisdictional surface waters. *Id.* at 963, 965.

In analyzing the facts before it, the Seventh Circuit explicitly recognized the possibility that ''water from the pond will enter the local ground waters, and thence underground aquifers that feed lakes and streams that are part of the 'waters of the United States.' '' *Id.* at 965. The court also recognized, however, that ''the Clean Water Act does not attempt to assert national power to the fullest,'' and intentionally does not apply to all waters. *Id.* Based on the text of the statute and the same compelling legislative history analyzed by the Fifth Circuit and discussed above, the court concluded that ''[t]he omission of ground waters from regulations is not an oversight,'' as ''Congress elected to leave the subject [of groundwater regulation] to state law[.]'' *Id.* Thus, there was no cognizable CWA claim based on discharges to ground water that may reach jurisdictional surface waters. *Id.*

Most recently, the Sixth Circuit concluded, in two related cases addressing pollutants from coal ash ponds that seeped into groundwater that subsequently reached jurisdictional surface waters, that the NPDES permitting requirements do not apply to releases to groundwater. In *Kentucky Waterways Alliance* v. *Kentucky Utilities Co.,* the Sixth Circuit held that the ''text and statutory context of the CWA'' make clear that the statute ''does not extend to reach this form of pollution.'' 905 F.3d at 933. In *Tennessee Clean Water Network* v. *TVA,* the court reversed a district court decision adopting the direct hydrologic theory, finding that ''any alleged leakages into the groundwater are not a violation of the CWA.'' 905 F.3d at 444. The Sixth Circuit recognized the statute's broad goal of protecting the Nation's waters, but held that this goal cannot be pursued at all costs ''because the CWA precludes federal regulation over non-navigable-water pollution and over nonpoint-source-pollution.'' *Ky. Waterways Alliance,* 905 F.3d at 937. The court explained:

> It is true that Congress sought to protect navigable waters with the CWA . . . But it also imposed several textual limitations on the means used to reach that goal. Had it wished to do so, Congress could have prohibited *all* unpermitted discharges of *all* pollutants to *all* waters. But it did not go so far. Instead, Congress chose to prohibit only the discharge of pollutants to ''*navigable* waters from any *point source*.''

Id.; see also, e.g., Prairie Rivers Network v. *Dynegy Midwest Generation, LLC,* No. 18–CV 2148, slip op. at 14 (C.D. Ill. Nov. 14, 2018) (Applying the Seventh Circuit's decision in *Village of Oconomowoc* to hold that ''[i]f the discharge is made into groundwater, and the pollutants somehow later find their way to navigable surface waters via a discrete hydrological connection, the CWA is still not implicated, because the offending discharge was made into groundwater, which is not subject to the CWA''); *Cape Fear River Watch* v. *Duke Energy Progress,* 25 F. Supp. 3d 798, 810 (E.D.N.C. 2014) (''Congress did not intend for the CWA to extend federal regulatory authority over groundwater, regardless of whether that groundwater is eventually or somehow 'hydrologically connected' to navigable surface waters.''); *Umatilla,* 962 F. Supp. at 1318 (observing that ''the CWA's NPDES program *should* apply to groundwater to adequately protect surface water,'' but concluding that ''the law as written, as intended by Congress, and as applied in Oregon for over two decades does not regulate even hydrologically-connected groundwater''); *26 Crown Assocs., LLC* v. *Greater New Haven Reg'l Water Pollution Control Auth.,* No. 3:15-cv-1439, 2017 U.S. Dist. LEXIS 106989, *24 (D. Conn. 2017) (noting that ''if the Clean Water Act were to apply as a routine matter to the discharge of pollution onto the ground that ends up seeping into the ground water, then Congress's purpose to limit the scope of the Clean Water Act [to point source discharges] would be easily thwarted.'').

In contrast, the circuit and district court decisions concluding that certain releases to groundwater *are* subject to NPDES requirement have often left unaddressed the text, structure, and legislative history of the Act pointing to Congress's intent to exclude all discharges to groundwater from the NPDES program. The Fourth Circuit recently held that point source releases to groundwater that reach jurisdictional surface waters require a NPDES program in certain instances, adopting EPA's historical direct hydrological connection approach. *Kinder Morgan,* 887 F.3d at 652. In that decision, the court did not address any of the legislative history discussed herein, nor did the court acknowledge or address the decisions of the Fifth or Seventh Circuit.

Rather, in analyzing whether gasoline from a ruptured underground pipeline that undisputedly leached from groundwater into navigable waters required a NPDES permit, the Fourth Circuit framed its inquiry as only whether, first, the discharge was from a point source, *id.* at 649–50, and second, whether there was a direct hydrological connection between the groundwater and jurisdictional surface water, a fact-specific determination. *Id.* at 651. The court cited to the broad purpose of the Act to restore and maintain the chemical, physical, and biological integrity of the Nation's waters, asserting that ''the statute established a regime of zero tolerance for unpermitted discharges of pollutants.'' *Id.* at 652. The court reasoned that ''if the presence of a short distance of soil and ground water were enough to defeat a claim, polluters easily could avoid liability under the CWA by ensuring that all discharges pass through soil and ground water before reaching navigable waters.'' *Id.* The court ultimately concluded that ''an alleged discharge of pollutants, reaching navigable waters located 1000 feet or less from the point source by means of ground water with a direct hydrological connection to such navigable waters, falls within the scope of the CWA.'' *Id.* at 652. In reaching this holding,[7] however, the court failed to consider Congress's intent, evident from the text, structure, and legislative history of the Act, to treat groundwater and nonpoint source discharges differently under the Act, by leaving their regulation to states.[8]

[7] One judge dissented from the panel's holding, finding that there was no Clean Water Act violation because the discharge of pollutants from the pipe had been repaired, and that the continued migration through groundwater was not a ''discharge of a pollutant'' under the Act. *Kinder Morgan,* 887 F.3d at 662–63 (Floyd, J. dissenting). The dissent recognized that ''[t]his kind of migration of pollutants through the natural movements of groundwater amounts to nonpoint source pollution,'' and that, ''[w]hile there is no doubt this kind of nonpoint source pollution affects the quality [of] navigable waters, Congress deliberately chose not to place nonpoint source pollution within the CWA's reach.'' *Id.*

[8] On September 12, 2018, in *Sierra Club* v. *Virginia Electric Power Co.,* the Fourth Circuit applied its decision in *Kinder Morgan* to another fact pattern involving the addition of pollutants to jurisdictional surface waters through groundwater.

Applying a similar analysis, in its decision in *County of Maui,* the Ninth Circuit explained:

> We assume without deciding that groundwater here is neither a point source nor a navigable water under the CWA. Hence, it does not affect our analysis that some of our sister circuits have concluded that groundwater is not a navigable water. We are not suggesting that the CWA regulates all groundwater. Rather, in fidelity to the statute, we are reinforcing that the Act regulates point source discharges to a navigable water, and that liability may attach where a point source discharge is conveyed to a navigable water through groundwater.

Cty. of Maui, 886 F.3d at 746 n.2 (citations omitted). The court also rejected the direct hydrological connection theory espoused by the United States as amicus, as ''it reads two words into the CWA ('direct' and 'hydrological') that are not there.'' *Id.* at n.3. Then, despite the court's claim of ''fidelity to the statute,'' it ultimately determined, without any grounding in the statute's text, that point source discharges to groundwater that reach jurisdictional surface water are subject to NPDES permitting requirements where they are fairly traceable back to the point source and more than *de minimis. Id.* at 749. The court also left ''for another day the task of determining when, if ever, the connection between a point source and a navigable water is too tenuous to support liability under the CWA,'' thus expanding the scope of the Act to cover any release of pollutants to groundwater that reaches a jurisdictional surface water. *Id.*

The Ninth Circuit stated that its decision was consistent with *Rice* and *Village of Oconomowoc,* despite reaching the opposite conclusion about the proper scope of the Act. The court's basis for claiming consistency with *Rice* was that the Fifth Circuit, in its analysis of the facts in that case, ''required some evidence of a link between discharges and contamination of navigable waters.'' *Id.* With respect to the *Village of Oconomowoc* decision, the Ninth Circuit asserted that the Seventh Circuit ''only considered allegations of a 'potential [rather than an actual] connection between ground waters and surface waters,' '' while the connection in its own case was undisputed. *Id.* However, these are factual distinctions that should not affect the ultimate outcome. While it is accurate that in both *Rice* and *Village of Oconomowoc,* the courts looked to whether a connection to jurisdictional surface waters existed, this factual inquiry and observation does not alter the courts' ultimate interpretations of the CWA and OPA, and their recognition of the line Congress drew with respect to pollutant discharges to groundwater.

In *Rice,* the court observed that ''[i]n light of Congress's decision not to regulate ground waters under the CWA/OPA,'' it was ''reluctant to construe the OPA in such a way as to apply to discharges onto land, with seepage into groundwater, that have only an indirect, remote, and attenuated connection with an identifiable body of 'navigable waters.' '' *Rice,* 250 F.3d at 272. However, while the court's reluctance was stated in relation to the facts in that case, its ultimate interpretation was based on Congress's intent: ''[w]e *must* construe the OPA in such a way as to respect Congress's decision to leave the regulation of groundwater to the States.'' *Id.* (emphasis added). Similarly, though the facts before the Seventh Circuit addressed only a potential hydrologic connection between groundwater and jurisdictional surface water, the court's determination was unequivocal: ''Neither the Clean Water Act nor the EPA's definition [of navigable waters] asserts authority over ground waters, just because these may be hydrologically connected with surface waters.'' 24 F.3d at 965.

The tests adopted by the Ninth and Fourth Circuits and certain district courts create a confusing patchwork of judicial interpretations, which the Agency has concluded lack support in the text, structure, and legislative history of the Act. As the Supreme Court has explained, ''an administrative agency's power to regulate in the public interest must always be grounded in a valid grant of authority from Congress,'' and ''in [its] anxiety to effectuate the congressional purpose,'' an agency ''must take care not to extend the scope of the statute beyond the point where Congress indicated it would stop.'' *See FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 161 (2000) (internal citations omitted). While the Ninth Circuit adopted a ''fairly traceable'' standard, rejecting EPA's prior ''direct hydrologic connection'' test, and the Fourth Circuit imposed a 1,000 foot distance limitation, other courts have adopted other variations on when groundwater is sufficiently connected to jurisdictional surface water to require a NPDES permit. *See, e.g., Tenn. Clean Water Network* v. *TVA,* 273 F. Supp. 3d 775, 827 (M.D. Tenn. 2017) (holding that ''[a]s long as a connection [between groundwater and surface water] is shown to be real, direct, and immediate, there is no statutory, constitutional, or policy reason to require that every twist and turn of its path be precisely traced''), *rev'd* 905 F.3d 436 (6th Cir. 2018); *McClellan Ecological Seepage Situation* v. *Weinberger,* 707 F. Supp. 1182, 1196 (E.D. Cal. 1998) (discharges to groundwater are subject to CWA regulation if ''the groundwater is *naturally connected* to surface waters'' (emphasis added)); *vacated on other grounds, McClellan Ecological Seepage Situation* v. *Perry,* 47 F.3d 325 (9th Cir. 1995).

These decisions expand the Act's coverage beyond what Congress envisioned, potentially sweeping into the scope of the statute commonplace and ubiquitous activities such as releases from homeowners' backyard septic systems that find their way to jurisdictional surface waters through groundwater. The interpretations adopted by the Ninth Circuit and Fourth Circuits both contravene Congress's intent to leave regulation of all releases of pollutants to groundwater to states under the CWA, and, as a practical matter, stretch the Act's carefully constructed program of regulation of point sources beyond a point that Congress would recognize. A holistic reading of the CWA leads to the conclusion that releases of pollutants to groundwater are *categorially excluded* from the NPDES program, and thus, Congress did not intend for discharges from point sources that reach jurisdictional surface waters through hydrologically connected groundwater to require a NPDES permit. It follows that neither EPA nor the courts need engage with specific factual questions of traceability via subsurface hydrogeology that are currently required by certain court decisions such as *County of Maui* and *Kinder Morgan.*

VI. Policy Considerations Supporting EPA's Interpretation

There is sufficient legal authority to address releases of pollutants to groundwater that subsequently reach jurisdictional surface waters at both the state and federal level without expanding the CWA's regulatory reach beyond what Congress envisioned. Consistent with Congress's intent in structuring the CWA, states may regulate groundwater quality in the manner best suited to their particular circumstances. This interpretation will

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In that case, the court recognized the precedent in *Kinder Morgan* that the addition of a pollutant into navigable waters via groundwater can violate Section 301(a) if the plaintiff can show a direct hydrological connection between the ground water and navigable waters. 903 F.3d 403, 409 (4th Cir. 2018). The court went on to hold that a coal-fired power plant that stored coal ash on site in a landfill and in settling ponds was not liable under CWA Section 301(a) for discharges of arsenic that leached from the coal ash into groundwater and ultimately into a nearby river because the settling ponds did not constitute ''point sources'' under the CWA. *Id.* at 411.

continue to give states primacy for regulating ubiquitous groundwater discharges from sources such as septic tanks which are known to affect jurisdictional surface water quality in some instances. Beyond state programs, three other federal statutes, the Safe Drinking Water Act (''SDWA''), the Resource Conservation and Recovery Act (''RCRA''), and the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') will continue to provide important protections for groundwater quality, and for surface waters impacted by releases to groundwater.

A. State Programs for Regulating Discharges to Groundwater

The CWA establishes a regulatory floor that protects the integrity of the Nation's navigable waters and provides states with broad authority to adopt laws and regulations that are more protective than the federal standards. As explained above, the Act identifies the preservation of state authority to regulate land and water resources within their borders as a primary aim of the Act and states that ''[i]t is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources . . . .'' 33 U.S.C. 1251(b). Congress also declared as a national policy that states manage the major construction grant program and implement the core permitting programs authorized by the Act, among other responsibilities. *Id.*

The Act envisions that states will take an active role in regulating discharges to waters within the state and expressly provides states with authority to regulate beyond the Act's regulatory floor. The CWA states that, except as expressly provided in the Act, nothing in the Act shall ''preclude or deny the right of any *State* . . . to adopt or enforce . . . any standard or limitation respecting discharges of pollutants, or . . . any requirement respecting control or abatement of pollution; except that . . . such State or political subdivision or interstate agency may not adopt or enforce any *effluent limitation,* or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less stringent than the *effluent limitation,* or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance under this chapter . . . .'' *Id.* § 1370. Congress further provided that nothing in the Act shall be ''construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.'' *Id.*

Several commenters on the Agency's February 2018 **Federal Register** notice described state laws and regulations that prohibit or limit discharges of pollutants to groundwater. For example, the Minnesota Pollution Control Agency stated in its comments that it ''believes Minnesota has adequate authority under state law to address discharges outside the scope of the NPDES or UIC programs.'' Comments submitted by Minnesota Pollution Control Agency (May 16, 2018) (Docket ID: EPA–HQ–OW–2018–0063–0664), *available at https://www.regulations.gov/document?D=EPA-HQ-OW-2018-0063-0664.* MPCA further stated that ''state permits are developed to protect groundwater as a drinking water source [and] [t]hey also ensure that surface water quality standards will be met.'' *Id.* The attorneys general of West Virginia, Alabama, Arkansas, Colorado, Georgia, Kansas, Louisiana, Missouri, Nebraska, Nevada, Oklahoma, South Carolina, South Dakota, Texas, and Wyoming submitted comments describing state laws that protect intrastate water, including groundwater, independent from the CWA. Comments submitted by West Virginia Attorney General, et al. (May 21, 2018) (Docket ID: EPA–HQ–OW–2018–0063–0497), *available at https://www.regulations.gov/document?D=EPA-HQ-OW-2018-0063-0497.*

States that have not enacted state law-based programs that comprehensively regulate discharges to groundwater continue to have wide latitude to do so under state law and the CWA. *See* 33 U.S.C. 1251(b), 1370. EPA's position that the CWA does not regulate releases of pollutants to groundwater, regardless of a connection to jurisdictional surface waters, does not preclude states from regulating these releases under state law. To the extent that there may be state laws that limit a state's ability to regulate beyond the federal floor, states remain free to modify these laws as they deem appropriate to regulate discharges in the state.

B. In Other Federal Statutes, Such as SDWA, RCRA, and CERCLA, Congress Explicitly Envisioned a Federal Role in Regulating Groundwater Quality

In addition to state programs for regulating discharges into groundwater, several federal statutes explicitly address regulation of groundwater quality. Unlike in the CWA paradigm, where the federal role is one of providing support to states to advance state regulatory programs, in the statutes below, Congress provided for a clear federal role. Review of the explicit provisions addressing discharges to groundwater in these statutes makes clear that Congress can and does directly address the issue of groundwater quality in specific federal programs. It is also equally clear that Congress tailored those programs to the concerns over specific practices posing an endangerment to groundwater, while also deferring to state regulation even in those programs. Together these statutes, along with the state programs described above, form a mosaic of laws and regulations that provide mechanisms and tools for EPA, states, and the public to ensure the protection of groundwater quality, and to minimize related impacts to surface waters.

1. SDWA

SDWA, enacted in 1974, two years after the CWA, contains provisions specifically aimed at preventing certain types of groundwater contamination. This statute is one of the vehicles through which Congress deliberately addressed the discharge of pollutants into groundwater, while also recognizing the important role for states to play in regulating groundwater pollution.

Pursuant to Section 1421 of SDWA, EPA has established requirements for state programs to regulate underground injection of fluids. *See* 42 U.S.C. 300h. Specifically, under that section Congress required EPA to establish minimum requirements for effective state programs to prevent underground injection which endangers drinking water sources, defined under SDWA to mean underground water which supplies or can reasonably be expected to supply any public water system. The underground injection control (''UIC'') program under SDWA contains regulatory requirements for four classes of wells; bans Class IV (shallow hazardous waste) wells; and by rule authorizes most Class V wells. The rule authorizing Class V wells requires certain reporting, and requires that the wells are operated in ways that do not cause movement of fluid that could endanger underground sources of drinking water, and that the wells are properly closed when they are no longer being used. *See* 40 CFR 144.24, 82.

The SDWA UIC program is one clearly designed and tailored by Congress to address and protect groundwater quality. While SDWA is targeted to a specific type of possible contamination, *i.e.,* discharges through certain types of well injection that may impact nearby drinking water sources,

consistent with Congressional deference to states in the area of groundwater regulation generally, it also is established primarily as a state program. The statute expressly requires EPA to permit or provide for ''consideration of varying geologic, hydrological, or historical conditions in different States and different areas within a State,'' and to avoid, to the extent feasible, requirements that would unnecessarily disrupt state injection programs. 42 U.S.C. 300h(b)(3).

2. RCRA

Like SDWA, in RCRA Congress chose to include provisions for federal regulation of discharges into groundwater, to protect groundwater quality from the discharge of solid and hazardous wastes. RCRA was enacted to ''reduce the generation of hazardous waste and to insure the proper treatment, storage, and disposal of that waste which is nonetheless generated, so as to minimize the present and future threat to human health and the environment.'' *Meghrig* v. *KFC W, Inc.,* 516 U.S. 479, 483 (1996). RCRA defines ''disposal'' as the ''discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, *including groundwater.*'' 42 U.S.C. 6903(3) (emphasis added).

RCRA has several provisions that expressly address groundwater monitoring and remediation at hazardous waste treatment, storage, and disposal (''TSD'') facilities. RCRA and EPA's implementing regulations explicitly require groundwater monitoring for specified categories of hazardous waste units. *See id.* § 6924(o), (p); *see also* 40 CFR 264.90–264.99. In addition, the owner and/or operator of a RCRA permitted hazardous waste facility is required to perform corrective action for all releases of hazardous waste or constituents from any solid waste management unit, including releases to groundwater. 42 U.S.C. 6924(u), (v); 40 CFR 264.100–264.101. Facilities that have or should have had RCRA ''interim status'' (*i.e.,* authorization to operate a TSD without a permit), and some facilities that had interim status, are subject to corrective action orders under RCRA section 3008(h). 42 U.S.C. 6928(h). Both RCRA permits and 3008(h) orders can thus address releases resulting in contaminated groundwater.

While these requirements may not apply to hazardous waste ''generators'' or to regulated units covered by specific exclusions or exemptions from groundwater monitoring, *see, e.g.,* 40 CFR 264.90, 264.101(d), RCRA also provides EPA with authority to address waste management activities of generators, transporters, owners or operators of treatment, storage, or disposal facilities, past or present, that ''may present an imminent and substantial endangerment to health or the environment,'' 42 U.S.C. 6973(a). The Agency has used this authority to address releases of contaminants into groundwater.

RCRA non-hazardous waste facilities are generally subject to EPA RCRA standards in 40 CFR 257 or section 258. These rules vary by unit type, and several categories (with exceptions) are subject to specific groundwater monitoring and corrective action requirements. These categories include facilities that manage coal combustion residuals in surface impoundments and landfills, as well as municipal solid waste landfill units. *See* 42 U.S.C. 6949a(c); 40 CFR 257.90–257.100 (coal combustion residuals surface impoundments and landfills); *id.* §§ 258.50–258.58 (municipal solid waste landfill units).

EPA's RCRA regulations addressing coal combustion residuals (''CCR'') were promulgated in 2015, with the impact of these facilities to groundwater as a critical consideration underlying the regulations. *See* 80 FR 21302, 21326 (Apr. 17, 2015) (Recognizing that ''approximately 63 percent of currently operating surface impoundments and landfills are unlined, and thus more prone to leach contaminants into groundwater.''). This rule specifically addresses ''groundwater contamination from the improper management of CCR in landfills and surface impoundments,'' and ''reflect[s] Congressional intent that protection of groundwater be a prime objective of any new solid waste regulations.'' *Id.* at 21396. To accomplish these objectives, the rule establishes specific requirements for groundwater monitoring and remediation. 40 CFR 257.90–257.98. If monitoring detects a statistically significant concentration of certain constituents in groundwater above background levels, the facility is required to undertake further, ''targeted'' monitoring to determine whether concentrations of specific contaminants exceed the rule's groundwater protection standards (which, for most contaminants, are based on EPA-established standards for drinking water). *Id.* §§ 257.98, 257.95. If contamination exceeding these levels is detected, corrective action is required. *Id.* §§ 257.96–257.97. The remedy selected as a result of the corrective action must be protective of human health and the environment, control the sources of the releases to reduce or eliminate further releases, remove from the environment as much of the contamination as is feasible, and otherwise comply with all applicable RCRA requirements. *Id.* § 257.97(b).

RCRA also contains corrective action requirements for releases of regulated substances from underground storage tanks (''USTs''). Releases from USTs can occur due to corrosion of tank material, faulty installation, or inadequate operating and maintenance procedures. Owners and/or operators of USTs must report releases and take corrective action in response, including releases to groundwater. *See* 42 U.S.C. 6991b(c); 40 CFR part 280, subparts E & F. The term ''release'' in relation to USTs is defined in RCRA to mean ''any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.'' 42 U.S.C. 6991(8). Unlike the CWA NPDES provisions, this provision in RCRA explicitly defines a release as being to groundwater as well as to surface water; where Congress intended for a provision to relate to both, it said so clearly.

3. CERCLA

CERCLA, also known as ''Superfund,'' is yet another example of Congress choosing to specifically address releases of hazardous substances to groundwater, which could reach and impact surface waters. CERCLA provides EPA with a number of tools to address releases of hazardous substances, pollutants and contaminants, specifically where a ''hazardous substance is released or there is a substantial threat of such a release into the environment'' or where there is a release or substantial threat of release of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare. 42 U.S.C. 9604(a)(1). CERCLA defines ''environment'' broadly, to include ''ground water,'' ''subsurface strata,'' as well as ''surface water.'' *Id.* § 9601(8). Thus, under CERCLA, EPA has clear authority to address releases into *both* groundwater and surface waters.

EPA's CERCLA authorities provide a variety of mechanisms for EPA to address hazardous substances in groundwater, through the ability to address releases or threatened releases of hazardous substances to the environment, issue orders, and recover costs of clean-up. *See* 42 U.S.C. 9604,

9606, 9607, 9621. In CERCLA, Congress explicitly provided that in remedial actions, the clean-up level for groundwater must be that ''which at least attains Maximum Contaminant Level Goals established under [SDWA] and water quality criteria established under . . . the Clean Water Act'' where such goals or criteria are relevant and appropriate under the circumstances of the release or potential release.'' *Id.* § 9621(d)(2)(A). EPA's National Contingency Plan regulations implementing CERCLA also provide that ''EPA expects to return usable ground waters to their beneficial uses wherever practicable, within a timeframe that is reasonable given the particular circumstances of the site.'' 40 CFR 300.430(a)(1)(iii)(F). The determination of a ''beneficial use'' of groundwater is tied to state and local classifications (unless the state classification is less stringent than the EPA classification scheme), evidencing EPA's recognition of the state-specific nature of groundwater regulation. *See* Preamble to the National Contingency Plan, 55 FR 8733 (Mar. 8, 1990).

Finally, as the Agency has recognized, ''CERCLA cleanup levels are designed to address all reasonably anticipated routes of exposure that may pose an actual or potential risk to human health or the environment.'' EPA Office of Solid Waste and Emergency Response Directive 9283.1–33 at 9. These routes of exposure include ''groundwaters as a source of contamination to other media'' including intrusion into surface waters. *Id.* In determining clean-up standards, CERCLA and the National Contingency Plan require the identification of ''applicable or relevant and appropriate requirements,'' 42 U.S.C. 9621(d); 40 CFR 300.400(g), which, for remedying discharges to groundwater that reaching surface water, could include CWA requirements that are specifically addressed at the receiving surface water. *See* Directive 9283.1–33 at 8 (''Where groundwaters may impact surface water quality, water quality criteria under sections 304 or 303 of the Clean Water Act, may be relevant and appropriate standards[.]''). Thus, both CERCLA and EPA's regulations and guidance clearly address and provide for remediation of not only discharges to groundwater, but specifically impacts to surface water from polluted groundwater.

Dated: April 12, 2019.

David P. Ross,

Assistant Administrator, Office of Water.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[EPA–HQ–OPPT–2018–0320; FRL–9992–05]

RIN 2070–AK21

Procedures for Review of CBI Claims for the Identity of Chemicals on the TSCA Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The 2016 amendments to the Toxic Substances Control Act (TSCA) require EPA to establish a plan to review all confidential business information (CBI) claims for specific chemical identity asserted in a Notice of Activity (NOA) Form A. EPA is proposing a rule to establish the plan, including the procedures for substantiating and reviewing these claims.

DATES: Comments must be received on or before June 24, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0320, by one of the following methods.

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Scott M. Sherlock, Environmental Assistance Division (Mail code 7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8257; email address: *sherlock.scott@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be affected by this action if you reported a confidential chemical substance under the TSCA Inventory Notification (Active-Inactive) Requirements rule (hereinafter ''Active-Inactive rule'') (Ref. 1) (40 CFR part 710, subpart B) through a Notice of Activity (NOA) Form A (Ref. 2) and sought to maintain an existing CBI claim for a specific chemical identity. The following North American Industrial Classification System (NAICS) codes are not intended to be exhaustive, but rather provides a guide to help readers determine whether this action may apply to them:

- Chemical manufacturing or processing (NAICS code 325).
- Petroleum and Coal Products Manufacturing (NAICS code 324).

The discussion in Unit III.A. and the proposed regulatory text describe in more detail the circumstances in which entities might be subject to this proposed action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Note that TSCA's statutory definition of ''manufacture'' includes importing. Accordingly, the regulatory definition of ''manufacture'' for this rule includes importation. Since ''manufacture'' is itself defined at 40 CFR 710.3(d) and at TSCA section 3(9) (15 U.S.C. 2602(9)) to include ''import,'' it is clear that importers are a subset of manufacturers. All references to manufacturing in this document should be understood to also encompass importing. Where EPA's intent is to specifically refer to domestic manufacturing or importing (both activities constitute ''manufacture''), this rule will do so expressly.

B. What is the agency's authority for taking this action?

EPA is proposing this rule pursuant to the authority in TSCA section 8(b), 15 U.S.C. 2607(b). See also the discussion in Unit II.B.

In addition, the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* requires Federal agencies to manage information resources to reduce information collection burdens on the public (including through the use of automated collection techniques or other forms of information technology);

increase program efficiency and effectiveness; and improve the integrity, quality, and utility of information to all users within and outside an agency, including capabilities for ensuring dissemination of public information, public access to Federal Government information, and protections for privacy and security (44 U.S.C. 3506).

TSCA section 2 expresses the intent of Congress that EPA carry out TSCA in a reasonable and prudent manner and in consideration of the impacts that any action taken under TSCA may have on the environment, the economy, and society. EPA is proposing to manage and leverage its information resources, including information technology, to require the use of electronic reporting to implement this proposed rulemaking in a reasonable and prudent manner.

C. What action is the agency taking?

Pursuant to TSCA sections 8(b)(4)(C) through (E), EPA is proposing to amend 40 CFR part 710 to establish a new subpart C that sets forth the Agency's plan to review certain CBI claims to protect the specific chemical identities of substances on the confidential portion of the TSCA Inventory. The CBI claims that would be reviewed under this plan are those that were asserted on NOA Form A's filed in accordance with the requirements in the Active-Inactive rule (40 CFR part 710, subpart B).

In accordance with TSCA section 8(b)(4)(D), EPA is proposing substantiation requirements for manufacturers (including importers) and processors who filed NOA Form A's with assertions that they seek to maintain CBI claims to protect the specific chemical identities of chemical substances on the confidential portion of the TSCA Inventory. Manufacturers and processors who provided substantiations pursuant to the voluntary substantiation process in the Active-Inactive rule NOA collection, or who identify a previous substantiation for the claim made to EPA during the 5-year period ending on the substantiation deadline specified by EPA, would be exempt from this requirement. EPA would review each specific chemical identity CBI claim and substantiation, and approve or deny each claim consistent with the procedures and substantive criteria in TSCA sections 8(b)(4) and 14 and 40 CFR part 2, subpart B. Also included in this proposed rule are provisions clarifying the duration of protection for approved CBI claims, and providing for the publication of annual review goals and results.

As described in Unit III.D., EPA is proposing to apply the electronic reporting requirement at 40 CFR 710.39 to the substantiation requirements of the CBI review plan. The Agency is proposing to require submitters to use EPA's Central Data Exchange (CDX), the Agency's electronic reporting portal, for reporting information.

D. Why is the agency taking this action?

TSCA section 8(b)(4)(C) requires EPA to promulgate a rule that establishes a plan to review all CBI claims to protect the specific chemical identities of chemical substances on the confidential portion of the TSCA Inventory that were asserted in an NOA Form A pursuant to the Active-Inactive rule. This proposed rule is a follow-on regulation to the Active-Inactive rule that would require substantiation of CBI claims for specific chemical identity from any reporters who asserted such a claim as part of the NOA Form A submission, but did not provide (voluntary) upfront substantiation at that time. TSCA section 8(b)(4)(C) further requires EPA to promulgate this rule not later than one year after the date that the Agency published the first TSCA Inventory containing all ''active'' substance designations. EPA announced the release of the updated TSCA Inventory on February 19, 2019. To download the public version of the TSCA Inventory, get more information about the TSCA Inventory Notification (Active-Inactive) Requirements rule, or requirements to notify EPA going forward, go to *https://www.epa.gov/tsca-inventory*.

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential costs of establishing the proposed reporting requirements for manufacturers and processors. An economic analysis titled ''Economic Analysis for the Proposed Rule: Procedures for Review of CBI Claims for the Identity of Chemicals on the TSCA Inventory'' has been prepared for the proposed rule, is available in the docket, and is briefly summarized here (Ref. 3). The proposed rule requirements involve a one-time reporting effort with activities that are the same, or similar to those in the Active-Inactive rule. All respondents would already have submitted at least one NOA under the Active-Inactive rule, and therefore should know whether any actions are necessary under this proposed rule. Moreover, an exemption included in this proposed rule would allow certain submitters to reference a previously submitted chemical identity CBI substantiation (in the last five years), in lieu of providing a full CBI substantiation for the NOA Form A chemical identity information.

Companies potentially affected by this proposed rule fall into three groups of potential NOA Form A reporters who made a CBI claim for a specific chemical identity. The first group (Group (1)) consists of those reporters who already voluntarily submitted upfront CBI substantiation as part of the NOA submission process, who therefore do not need to take further action. The second group (Group (2)) consists of those reporters who will be able to use the exemption offered under this proposed rule by referencing a previous substantiation, such as one submitted through the 2016 Chemical Data Reporting (CDR) rule (40 CFR part 711). The third group (Group (3)) consists of the remaining reporters who did not submit prior chemical identity CBI substantiations and would be required to provide full substantiation as proposed in this rule. The average incremental burden and cost estimates include rule familiarization, recordkeeping and submission of applicable CBI substantiations (*i.e.,* one-time form completion). For Group (1), the burden and costs for this group are minimal and were not calculated because the reporters have already voluntarily submitted upfront CBI substantiation as part of the NOA submission process for the Active-Inactive rule and would not need to take further action. For Group (2), the average burden and costs per company are estimated at 5.1 hours and $390, respectively per submission (involving on average four chemicals per company), for rule familiarization and substantiation using a previous reference. For Group (3), the average burden and costs per company are estimated at 34.1 hours, and $2,641 respectively per submission (involving on average 27 chemicals per company), for rule familiarization and full substantiation. An estimated 126 companies would be expected to report, with an estimated 23 companies in Group (2), and 103 companies in Group (3), resulting in an estimated total incremental burden and costs expected over 60 days of 3,629 hours and $280,981 for this proposed rule (Ref. 3).

F. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a CD–ROM or other electronic media that you mail to EPA, mark the outside of the media as CBI and then identify electronically within the media the specific information that is claimed as

CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2, subpart B.

2. Tips for preparing your comments. When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.html*.

II. Background

A. The TSCA Inventory and Active-Inactive Rule

EPA is required under TSCA section 8(b) to compile and keep current a list of chemical substances manufactured or processed in the United States. This list, the TSCA Chemical Substance Inventory (TSCA Inventory), is EPA's comprehensive list of confidential and non-confidential substances manufactured or processed in the United States for nonexempt commercial purposes (Ref. 4). EPA promulgated the Active-Inactive rule to obtain the information necessary for EPA to designate as ''active'' chemical substances that had been manufactured or processed for a nonexempt commercial purpose during the 10-year time period ending on June 21, 2016. Respondents (manufacturers and processors) reported these chemical substances through the process set forth in 40 CFR part 710, subpart B, by filing an NOA Form A with EPA. Consistent with TSCA section 8(b)(4)(B)(ii), respondents who manufactured or processed an active chemical substance listed on the confidential portion of the TSCA Inventory prior to June 22, 2016, could seek to maintain an existing claim for protection against disclosure of the specific chemical identity of the substance as confidential by voluntarily filing an NOA Form A that included such request. Through this process established in 40 CFR 710.37(a), manufacturers and processors secured an opportunity to maintain the confidential status of a specific chemical identity on the confidential portion of the TSCA Inventory.

B. Statutory Requirements for the CBI Review Plan

TSCA section 8(b)(4)(C) requires EPA to promulgate a rule establishing a plan to review all CBI claims to protect the specific chemical identities of chemical substances on the confidential portion of the TSCA Inventory that were asserted in an NOA Form A. TSCA requires that EPA promulgate this rule not later than one year after the publication of the first TSCA Inventory containing all ''active'' substance designations (TSCA section 8(b)(4)(C)). TSCA also requires the Agency to implement the CBI review plan so as to complete all CBI claim reviews not later than five years after such TSCA Inventory publication, with the possibility of a two-year extension (TSCA section 8(b)(4)(E)). Since the updated TSCA Inventory was released on February 19, 2019, the deadline for issuing a final rule is February 19, 2020, and the deadline for completing all the CBI claim reviews is February 19, 2024. If EPA determines in the future to invoke the 2-year extension under TSCA, the deadline for completing all the CBI claim reviews would then become February 19, 2026.

Other types of CBI claims are outside the scope of the review plan under TSCA section 8(b)(4)(C) through (E), and hence are outside the scope of this proposed rule. Those claims are governed by other statutory and regulatory provisions. Substantiation and review of CBI claims for other data elements in an NOA Form A are governed by TSCA section 14(g) and 40 CFR 710.37(b) and (c)(1). Substantiation and review of CBI claims for specific chemical identity in an NOA Form B—a forward-looking reporting form required when reintroducing an ''inactive'' chemical substance into U.S. commerce for a nonexempt commercial purpose—are governed by TSCA section 8(b)(5) and 40 CFR 710.37(a)(2).

TSCA section 8(b)(4)(D) provides the parameters of the review plan for specific chemical identity CBI claims asserted in NOA Form A's.

1. Requirement to provide substantiations. TSCA section 8(b)(4)(D)(i) provides that in establishing the review plan, EPA must require all manufacturers and processors to substantiate their CBI claims for specific chemical identities in accordance with TSCA section 14 and at a time specified by EPA, unless the manufacturer or processor has previously substantiated the claim in a submission made to EPA during the 5-year period ending on the substantiation deadline specified by EPA.

2. EPA review of confidentiality claims and substantiations. TSCA section 8(b)(4)(D)(ii) requires that EPA review each CBI claim and substantiation for a specific chemical identity to determine if such claim qualifies for protection from disclosure. The Agency must then approve or deny each claim. TSCA section 8(b)(4)(D)(ii)(III) further provides that if the information is approved for CBI status, then, except as otherwise provided in TSCA sections 8 and 14, EPA must protect such information from disclosure for a period of 10 years, unless the claim is withdrawn, or EPA becomes aware that the information does not qualify for protection from disclosure, in which latter case EPA must take the actions described in TSCA section 14(g)(2) (*i.e.,* to notify the claimant of EPA's intent to disclose the information).

3. Completion of reviews. TSCA section 8(b)(4)(E) provides that the Agency must implement the review plan so as to complete all of the reviews not later than five years after the date on which the Agency has compiled the initial list of active substances. With adequate public justification, the Agency may extend the deadline for completion of reviews for not more than two years.

4. Posting of annual goals and numbers of reviews completed. TSCA section 8(b)(4)(E) further requires that at the beginning of each year, EPA publish an annual goal for reviews and the number of reviews completed in the prior year.

5. Record retention requirement. TSCA section 8(b)(9)(B) provides that records relevant to compliance with this rule must be retained for a period of 5 years beginning on the last day of the submission period.

III. Summary of Proposed Rule

The TSCA section 8(b)(4)(D) and (E) provisions regarding the Review Plan are prescriptive and the proposed rule closely follows the statutory text.

A. What confidentiality claims for specific chemical identities would be substantiated under this rule?

1. CBI claims subject to substantiation. Subject to the exemptions described in this unit, the substantiation requirement in this proposed rule would apply to all CBI claims for specific chemical identities that manufacturers or processors requested to maintain in NOA Form A's filed in accordance with the Active-Inactive rule.

2. Exemptions from substantiation requirement. Pursuant to TSCA section 8(b)(4)(D), EPA is proposing exemptions from the requirement to submit new substantiation in certain cases where the CBI claims have already been substantiated in a recent submission to EPA. The proposed exemptions would be available to manufacturers or processors who provided substantiations for specific chemical

identity CBI claims either: (1) Pursuant to the voluntary substantiation process associated with the Active-Inactive rule, or (2) in another submission made to EPA less than five years before the substantiation deadline that will be set in the final rule.

For those manufacturers or processors who filed voluntary substantiations with their NOA Form A's pursuant to the process set forth in the Active-Inactive rule, codified at 40 CFR 710.37(a)(1), no further action would be required. Those persons would automatically be deemed exempt from the substantiation requirement under this proposed rule.

EPA is proposing to require manufacturers and processors who wish to establish eligibility for an exemption based upon any other recently-submitted substantiation to report and identify for EPA the following about that recently-submitted substantiation: Submission date; submission type; and case number, transaction ID, or equivalent identifier that uniquely identifies the previous submission that includes the substantiation upon which the manufacturer or processor is relying.

Previously submitted substantiations might include, for example, those submitted pursuant to a regulatory up-front substantiation requirement (such as 40 CFR 711.30(b)(1) or 40 CFR 720.85(b)(3)(iv)), the statutory substantiation requirement at TSCA section 14(c)(3) (see 82 FR 6522, January 19, 2017), or the comment process described in 40 CFR 2.204(e).

B. When would substantiation be required?

EPA is proposing to require that all substantiations be filed not later than 90 days after the effective date of the final rule. EPA is proposing the same filing deadline for submissions identifying a previously submitted substantiation for purposes of establishing eligibility for an exemption. If a substantiation or notice of prior CBI substantiation was not filed within the 90-day filing period in accordance with all requirements of this proposed rule or voluntarily filed in accordance with all requirements of 40 CFR 710.37(a)(1), EPA is proposing to consider the confidentiality claim to be deficient and would treat the specific chemical identity as not subject to a confidentiality claim, such that EPA may make the information public without further notice. This treatment of unsubstantiated confidentiality claims as deficient would be consistent with how EPA has handled unsubstantiated confidentiality claims in other regulations, *e.g.,* 40 CFR 710.37(a)(2) and (b) (Active-Inactive rule) and 40 CFR 711.30(e) (Chemical Data Reporting rule). EPA nevertheless requests comment on the validity of making this information public without further notice, particularly where a claimant may have previously submitted a substantiation to EPA less than five years before the substantiation deadline that will be set in the final rule, but failed to report and identify that previously-submitted substantiation to EPA within the 90-day filing period.

C. How would CBI claims be substantiated?

EPA is proposing to require that non-exempt manufacturers and processors substantiate any CBI claim for a specific chemical identity that they requested to maintain in an NOA Form A by submitting answers to the questions identified in Unit III.C.1, by providing the certification statement identified in Unit III.C.2, and by requiring that the submission be signed and dated by an authorized official.

1. Substantiation questions. a. Do you believe that the information is exempt from substantiation pursuant to TSCA section 14(c)(2)? If you answered yes, you must individually identify the specific information claimed as confidential and specify the applicable exemption(s).

b. Will disclosure of the information likely result in substantial harm to your business's competitive position? If you answered yes, describe with specificity the substantial harmful effects that would likely result to your competitive position if the information is made available to the public.

c. To the extent your business has disclosed the information to others (both internally and externally), what precautions has your business taken? Identify the measures or internal controls your business has taken to protect the information claimed as confidential: Non-disclosure agreement required prior to access; access is limited to individuals with a need-to-know; information is physically secured; other internal control measure(s). If yes, explain.

d. Does the information appear in any public documents, including (but not limited to) safety data sheets, advertising or promotional material, professional or trade publication, or any other media or publications available to the general public? If you answered yes, explain why the information should be treated as confidential.

e. Is the claim of confidentiality intended to last less than 10 years? If so, indicate the number of years (between 1–10 years) or the specific date/occurrence after which the claim is withdrawn.

f. Has EPA, another federal agency, or court made any confidentiality determination regarding information associated with this chemical substance? If you answered yes, explain the outcome of that determination and provide a copy of the previous confidentiality determination or any other information that will assist in identifying the prior determination.

g. Is the confidential chemical substance publicly known to have ever been offered for commercial distribution in the United States? If you answered yes, explain why the information should be treated as confidential.

2. Certification Statement. An authorized official of a manufacturer or processor substantiating a request to maintain an existing claim of confidentiality for specific chemical identity would be required to certify that the submission complies with the requirements of the rule by signing and dating the following certification statement:

> ''I certify that all claims for confidentiality made or sought to be maintained with this submission are true and correct, and all information submitted herein to substantiate such claims is true and correct. Any knowing and willful misrepresentation is subject to criminal penalty pursuant to 18 U.S.C. 1001. I further certify that it is true and correct that:
>
> • My company has taken reasonable measures to protect the confidentiality of the information;
>
> • I have determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law;
>
> • I have a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of my company; and
>
> • I have a reasonable basis to believe that the information is not readily discoverable through reverse engineering.''

D. How would information be submitted to EPA?

The proposed rule would require persons submitting substantiations or information on previously submitted substantiations to follow the electronic reporting procedures set forth in the Active-Inactive rule at 40 CFR 710.39. Any person submitting a substantiation under this proposed rule could claim any part or all of the substantiation as confidential business information. Submitters would be required to use EPA's electronic reporting portal, Central Data Exchange (CDX), and EPA's web-based reporting tool, Chemical Information Submission System (CISS). Because all submitters under this proposed rule would have previously

filed NOA Form A's under the Active-Inactive rule using these electronic reporting procedures, EPA expects that all submitters are already registered with CDX and familiar with the electronic reporting procedures. EPA is proposing mandatory electronic reporting because it is expected to allow for more efficient data transmittal, support improved data quality, and minimize respondent burden and reduce EPA administrative costs associated with information submission and recordkeeping.

E. How would EPA review claims of confidentiality for specific chemical identities?

Consistent with how EPA handles the review of other TSCA confidentiality claims, EPA would carefully consider the facts provided in the substantiations, any pertinent previously issued confidentiality determinations, and other reasonably available information that EPA finds appropriate to determine the information's entitlement to confidential treatment. *See* 40 CFR 2.204(f), 2.205(d)(2) and 2.306. EPA would apply the substantive criteria for confidentiality determinations set forth in 40 CFR 2.208 and 2.306(g), which provide in relevant part that information is entitled to confidential treatment for the benefit of a particular business if: (a) The business has asserted a confidentiality claim which has not expired by its terms, nor been waived nor withdrawn; (b) the business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures; (c) the information is not, and has not been, reasonably obtainable without the business's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of need in a judicial or quasi-judicial proceeding); (d) no statute specifically requires disclosure of the information; and (e) the business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position.

In instances where there are multiple NOA Form A's asserting the confidentiality of the same chemical identity, the Agency may choose to review these NOA Form A's together as a matter of efficiency.

In instances where a CBI claim is denied, the Agency would notify the submitter, in writing, of EPA's intent to disclose the specific chemical identity and of EPA's reasons for denying the claim. The notice would be furnished by certified mail (return receipt requested), by personal delivery, or by other means that allows verification of the fact and date of receipt. EPA would not disclose the specific chemical identity until the date that is 30 days after the date on which the submitter receives the denial notice. Submitters can challenge EPA's denial of a CBI claim by commencing an action to prevent disclosure in an appropriate Federal district court. See generally TSCA section 14(g) and 40 CFR 2.306(e). In instances where a CBI claim is approved, EPA would so inform the submitter, and the chemical substance will be identified in subsequent publications of the TSCA Inventory by a unique identifier assigned under TSCA section 14(g)(4), in addition to the accession number, generic name, and, if applicable, premanufacture notice case number. Further information about the assignment and application of unique identifiers for confidential chemical substances may be found in the **Federal Register** of June 27, 2018 (83 FR 30168).

F. Annual Review Goals and Results, Extension

EPA is proposing to use the Agency's website to publish its annual goal for reviews completed under this review plan at the beginning of each calendar year, starting with its goals for 2020, which the Agency anticipates would be posted in February 2020 on the Agency web page. EPA is also proposing to track the number of CBI reviews completed under this review plan each year and is proposing to use the Agency's website to publish that number at the beginning of the following year, starting with the number of reviews completed in 2020, which the Agency anticipates would be posted on the Agency web page in February 2021. These activities will address the requirements of TSCA section 8(b)(4)(E)(ii)(II).

EPA intends to implement the CBI review plan described in this proposed rule to complete reviews of all CBI claims for specific chemical identities not later than five years after the publication of the first TSCA Inventory containing all ''active'' substance designations based on NOA Form A's, as required under TSCA section 8(b)(4)(E)(i). Since the initial list of active substances published on February 19, 2019, EPA intends to complete all reviews by February 19, 2024. EPA intends the annual review goals to take into consideration this target completion date, the number of claims needing review, and available resources. Before the effective date of this rule's finalization, EPA may begin reviewing and deciding claims that were voluntarily substantiated under the Active-Inactive rule (subject to the outcome of pending litigation involving that rule), or that appear to be clearly not entitled to protection from disclosure based upon other information available to the Agency. TSCA section 14(i)(2) expressly permits EPA to review, require (re)substantiation of, and decide TSCA CBI claims before the effective date of such rules applicable to those claims as EPA may promulgate after June 22, 2016. EPA believes that TSCA section 14(i)(2) clearly authorizes the Agency to begin its reviews under TSCA section 8(b)(4) prior to publication of this final rule, and that doing so is appropriate in light of the Congressionally-mandated timeline for the completion of reviews.

TSCA section 8(b)(4)(E)(ii)(I) provides that after an adequate public justification, the Agency may extend the five-year deadline for completion of reviews for not more than two additional years. While the Agency does not currently anticipate a need for an extension, possible justifications for an extension might include, among other things, competing TSCA obligations which prevent the Agency from completing the reviews within five years, intervening events that divert the Agency's resources from completing the required reviews, or litigation involving the claim substantiation and review process that may delay EPA's commencement of CBI claim reviews. Should an extension become necessary, EPA is proposing to announce the extension and its justification to the public via a notice in the **Federal Register**.

G. Duration of Protection From Disclosure

TSCA section 8(b)(4)(D)(ii)(III) provides that specific chemical identities for which EPA has approved a CBI claim under TSCA section 8(b)(4)(D) must be protected from disclosure for a period of 10 years, unless, prior to the expiration of that period, the claimant notifies EPA that they are withdrawing the confidentiality claim, in which case the Agency cannot protect the information from disclosure; or the Agency otherwise becomes aware that the information does not qualify for protection from disclosure, in which case the Agency must take the actions described in TSCA section 14(g)(2) (*i.e.,* to notify the claimant of EPA's intent to disclose the information). TSCA section 8(b)(4)(D)(ii)(III) does not explicitly state when the 10-year period of protection begins, but TSCA section 8(b)(4)(D)(ii) provides as a general matter that EPA's

actions under the review plan must be ''in accordance with section 14.'' Under TSCA section 14(e)(1)(B)(i), as amended on June 22, 2016, the duration of protection from disclosure lasts ''for a period of 10 years from the date on which the person asserts the claim with respect to the information submitted to the Administrator.''

Notably, all specific chemical identity CBI claims subject to review under TSCA section 8(b)(4) and this proposed rule had already been asserted by one or more persons prior to June 22, 2016, resulting in the placement of the chemical substance on the confidential portion of the TSCA Inventory. Pursuant to TSCA section 8(b)(4)(B)(ii) and the Active-Inactive rule, manufacturers and processors submitting NOA Form A's were only permitted to indicate that they seek to maintain an existing claim for protection against disclosure of the specific chemical identity of the chemical substance. TSCA section 8(b)(4)(C) describes these requests to maintain existing claims as ''*claims . . . asserted* pursuant to [TSCA section 8(b)(4)(B)],'' and TSCA section 8(b)(4)(D)(i) refers to ''manufacturers or processors *asserting claims* under [TSCA section 8(b)(4)(B)]'' (emphasis added). Thus, EPA believes Congress intended that the filing date of the request seeking to maintain the CBI claim (*i.e.,* the filing date of the NOA Form A) may function as the date of claim assertion for purposes of determining the period of protection from disclosure. However, in cases where the same specific chemical identity was subject to a CBI claim in another submission filed on or after June 22, 2016, EPA believes it would be incongruous to effectively re-start the 10-year period of protection from disclosure based upon the subsequent submission of a request (*i.e.,* an NOA Form A) seeking to maintain that claim. Accordingly, EPA proposes to interpret the date of assertion for purposes of calculating the duration of protection under TSCA section 8(b)(4)(D)(ii)(III) as the date of submission of the first filing in which the specific chemical identity was claimed as CBI after June 22, 2016. This interpretation would impact the calculation of the period of protection from disclosure where there are multiple submitters of the NOA Form A that are asserting confidentiality claims on the same specific chemical identity, as well as where one or more submitters of information to EPA outside the context of the NOA Form A has asserted a specific chemical identity confidentiality claim after June 22, 2016. Companies will be notified of the date from which the 10-year period of protection will be calculated.

For example, if on July 1, 2016, a company addressing a CDR rule reporting requirement filed a report for a subject chemical substance and asserted a CBI claim for the specific chemical identity, and if EPA subsequently approved the company's confidentiality claim, then the 10-year time period of protection from disclosure would begin on July 1, 2016. If that company subsequently filed an NOA Form A on January 1, 2018 and sought to maintain the confidentiality claim for that specific chemical identity, and if EPA subsequently approved that claim, the 10-year period of protection from disclosure would continue to run from July 1, 2016, and would not restart on the date of NOA filing. If a second company then filed an NOA Form A on February 1, 2018 seeking to maintain a CBI claim for that same specific chemical identity, and the second company's claim were approved, the 10-year period of protection from disclosure would still run from July 1, 2016. In cases where an NOA Form A was the first submission to assert the CBI claim for a specific chemical identity after June 22, 2016, the 10-year period of protection for an approved claim would begin on the date of that NOA filing.

H. What are the record retention requirements?

EPA is proposing to require that persons subject to the finalized rule retain records that document any information reported to EPA. The proposed rule would require such records to be retained for a period of 5 years beginning on the last day of the submission period, which is consistent with the statutory mandate in TSCA section 8(b)(9)(B).

IV. Request for Comments

EPA is seeking public comment on all aspects of this proposed rule, including filing requirements, the exemptions process, annual goal setting, duration of protection from disclosure, Agency reviews, economic burden, and the scope of the substantiation questions described in Unit III.C and referenced in the proposed regulatory text at section 710.45, as well as other issues discussed in this document.

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these references and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. TSCA Inventory Notification (Active-Inactive) Requirements Rule. **Federal Register**, 82 FR 37520, August 11, 2017 (FRL–9964–22).

2. EPA. Notice of Activity Form A; Final, 2017.

3. EPA. *Economic Analysis for the Proposed Rule: Procedures for Review of CBI Claims for the Identity of Chemicals on the TSCA Inventory*—RIN 2070–AK21—Office of Pollution Protection and Toxics. Washington, DC, February 2019.

4. EPA. TSCA Chemical Substance Inventory. 2018. *https://www.epa.gov/tsca-inventory/how-access-tsca-inventory*.

5. EPA. ICR No. 2594.01 *Information Collection Request for* TSCA Review Plan CBI Substantiation *Supporting Statement for a Request for OMB Review under the Paperwork Reduction Act*. February 2019.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders*.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review.

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket for this action as required by section 6(a)(3)(E) of Executive Order 12866.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be subject to the requirements for regulatory actions specified in Executive Order 13771 (82 FR 9339, February 3, 2017). EPA prepared an analysis of the estimated costs and benefits associated with this action (Economic Analysis, Ref. 3), which is available in the docket and is summarized in Unit I.E.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR)

document that the EPA prepared has been assigned EPA ICR number ICR No. 2594.01 and OMB Control No. 2070–NEW (Ref. 5). You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The reporting requirements identified in the proposed rule would provide EPA with information necessary to evaluate confidentiality claims and determine whether the claims qualify for protection from disclosure. Manufacturers and processors who provided substantiations pursuant to the voluntary substantiation process in the Active-Inactive rule NOA collection would be exempt from the proposed substantiation requirements. EPA would review each specific chemical identity CBI claim and substantiation, and approve or deny each claim consistent with the procedures and substantive criteria in TSCA sections 8(b)(4) and 14 and 40 CFR part 2, subpart B.

Respondent's obligation to respond: Mandatory.

Frequency of response: Once per chemical.

Estimated total number of potential respondents: 126.

Estimated total burden: 3,629 hours (one time). Burden is defined at 5 CFR 1320.3(b).

Estimated total costs: $ 280,981 (one time), includes no annualized capital investment or maintenance and operational costs.

Under PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to EPA using the docket identified at the beginning of this proposed rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than May 23, 2019. EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities subject to the requirements of this action are manufacturers (including importers) and processors of chemical substances. EPA estimates that a total of 126 companies are expected to be impacted by this proposed rule, of which 121 are identified as small entities. Given the estimated per submission burden and costs range from 5.1 hours and $390 (for Group (2)) to 34.1 hours and $ 2,640 (for Group (3)), as presented in Unit 1.E. EPA has determined that all 121 of the identified small entities considered in this analysis will experience an impact of less than 1% of revenues.

In the affected universe of small entities, there are two groups of entities affected by this proposed rule (Groups (2) and (3)), based on the extent of substantiation information involved in the submission. Entities of Group (3) are expected to incur the highest burden under this proposed rule, as they are required to submit full confidentiality substantiations (each submission involving an average of 27 chemicals per entity) in response to the regulatory requirements. As a conservative approach, in this small entity analysis the higher unit cost from Group (3), as the most affected group, is applied to all small entities. Details of this analysis are included in the accompanying Economic Analysis for this proposed rule (Ref. 3).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action is not expected to impose enforceable duty on any state, local or tribal governments, and the requirements imposed on the private sector are not expected to result in annual expenditures of $100 million or more for the private sector. As such, EPA has determined that the requirements of UMRA sections 202, 203, 204, or 205 do not apply to this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, E.O. 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of Executive Order 13045 has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on energy supply, distribution, or use.

J. National Technology Transfer and Advancement Act (NTTAA)

Since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994), because it does not establish an environmental health or safety standard. This action establishes an information requirement and does not affect the level of protection provided to human health or the environment.

List of Subjects in 40 CFR Part 710

Environmental Protection, Chemicals, Confidential Business Information, Hazardous substances, Reporting and Recordkeeping Requirements.

Dated: April 10, 2019.

Andrew R. Wheeler,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 710—COMPILATION OF THE TSCA CHEMICAL SUBSTANCE INVENTORY

■ 1. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a) and (b).

■ 2. Add subpart C to read as follows:

Subpart C—Review Plan

Sec.

§ 710.41 Scope.

This part applies to the substantiation and review of claims of confidentiality asserted in Notices of Activity Form A to protect the specific chemical identities of chemical substances.

§ 710.43 Persons subject to substantiation requirement.

(a) Any person who filed a Notice of Activity Form A requesting to maintain an existing confidentiality claim for a specific chemical identity must substantiate that confidentiality claim as specified in §§ 710.45 and 710.47 unless eligible for an exemption.

(b) *Exemptions.* (1) Any person who completed the voluntary substantiation process set forth in § 710.37(a)(1) by submitting with the Notice of Activity Form A answers to the questions in § 710.37(c)(1) and (2), signed and dated by an authorized official, and completing the certification statement for claims specified in § 710.37(e), is exempt from the substantiation requirement of this subpart.

(2) A person who has previously substantiated the confidentiality claim for a specific chemical identity that the person requested to maintain in a Notice of Activity Form A is exempt from the substantiation requirement of this subpart if both of the following conditions are met:

(i) The previous substantiation was submitted to EPA on or after [insert date five years before the date that is 90 days after effective date of final rule]; and

(ii) The person reports to EPA the submission date; submission type; and case number, transaction ID, or equivalent identifier for the previous submission that contained the substantiation, not later than the deadline specified in § 710.47.

§ 710.45 Contents of substantiation.

A person substantiating a confidentiality claim for a specific chemical identity must submit answers to the questions in § 710.37(c)(1) and (2), signed and dated by an authorized official, and complete the certification statement in § 710.37(e). If any of the information contained in the answers to the questions listed in § 710.37(c)(1) or (2) is claimed as confidential, the submitter must clearly indicate such by marking the substantiation as confidential business information.

§ 710.47 When to submit substantiation or information on previous substantiation.

(a) All persons required to substantiate a confidentiality claim pursuant to § 710.43(a) must submit their substantiation not later than [insert date that is 90 days after effective date of final rule].

(b) All persons who seek an exemption under § 710.43(b)(2) must submit the information specified in § 710.43(b)(2)(iii) not later than [date that is 90 days after effective date of final rule].

§ 710.49 No confidentiality claim.

If substantiation required under § 710.43(a) is not submitted to EPA in accordance with the provisions of this subpart, and no exemption under § 710.43(b) applies, EPA will consider the confidentiality claim as deficient, so that the specific chemical identity is not subject to a confidentiality claim, and EPA may make the information public without further notice to the Notice of Activity Form A submitter.

§ 710.51 Electronic filing.

EPA will accept information submitted under this subpart only if submitted in accordance with § 710.39.

§ 710.53 Record-keeping requirements.

Each person who is subject to this part must retain records that document any information reported to EPA. Records must be retained for a period of 5 years beginning on the last day of the submission period.

§ 710.55 Claim review, duration of protection, TSCA Inventory maintenance, posting results, and extension.

(a) *Review criteria and procedures.* Except as set forth in this subpart, confidentiality claims for specific chemical identities asserted in Notices of Activity Form A will be reviewed and approved or denied in accordance with the criteria and procedures in 40 CFR part 2, subpart B.

(b) *Duration of protection from disclosure.* Except as provided in 40 CFR part 2, subpart B, and section 14 of TSCA, a specific chemical identity that is the subject of an approved confidentiality claim under this subpart will be protected from disclosure for a period of 10 years from the date on which the confidentiality claim was first asserted by any submitter after June 22, 2016, unless, prior to the expiration of the period, the claimant notifies EPA that the person is withdrawing the confidentiality claim, in which case EPA will not protect the information from disclosure; or EPA otherwise becomes aware that the information does not qualify for protection from disclosure, in which case EPA will take the actions described in TSCA section 14(g)(2) to notify the claimant of EPA's intent to disclose the information.

(c) *Updating the TSCA Inventory.* EPA will periodically update the TSCA Inventory based on the results of the reviews of the confidentiality claims asserted in Notices of Activity Form A.

(d) *Posting of annual goals and numbers of reviews completed.* At the beginning of each calendar year, EPA will publish an annual goal for reviews and the number of reviews completed in the prior year on the Agency website. Determination of annual review goals will take into consideration the number of claims needing review, available resources, and a target completion date for all reviews under this subpart not later than February 19, 2024.

(e) *Extension.* If EPA determines that the target completion date in paragraph (d) of this section cannot be met based on the number of claims needing review and the available resources, then EPA will publish a document in the **Federal Register** announcing the extension of the deadline to complete its review of all confidentiality claims under this subpart for not more than two additional years, together with an explanation of the reasons for the extension.

[FR Doc. 2019–07920 Filed 4–22–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 406, 407, 422, 423, 431, 438, 457, 482, and 485

[CMS–9115–N]

RIN 0938–AT79

Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Interoperability and Patient Access for Medicare Advantage Organization and Medicaid Managed Care Plans, State Medicaid Agencies, CHIP Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans in the Federally-facilitated Exchanges and Health Care Providers; Supplement and Extension of Comment Period

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; supplement and extension of comment period.

SUMMARY: This document extends the comment period for the proposed rule entitled ''Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Interoperability and Patient Access for Medicare Advantage Organization and Medicaid Managed Care Plans, State Medicaid Agencies, CHIP Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans in the Federally-facilitated Exchanges and Health Care Providers'' that appeared in the March 4, 2019 **Federal Register**. The comment period for the proposed rule, which would end on May 3, 2019, is extended 30 days to June 3, 2019. We additionally note that based on public comments received on this proposed rule, we will adjust the effective dates of our policies to allow for adequate implementation timelines, as appropriate.

DATES: The comment period for the proposed rule (84 FR 7610) is extended to 5 p.m., eastern daylight time, on June 3, 2019.

ADDRESSES: You may submit comments as outlined in the March 4, 2019 proposed rule (84 FR 7610). Please choose only one method listed.

FOR FURTHER INFORMATION CONTACT: Alexandra Mugge, (410) 786–4457, for issues related to interoperability, CMS health IT strategy, technical standards and patient matching.

Natalie Albright, (410) 786–1671, for issues related to Medicare Advantage.

John Giles, (410) 786–1255, for issues related to Medicaid.

Emily Pedneau, (301) 492–4448, for issues related to Qualified Health Plans.

Meg Barry, (410) 786–1536, for issues related to CHIP.

Thomas Novak, (202) 322–7235, for issues related to trust exchange networks and payer to payer coordination.

Sharon Donovan, (410) 786–9187, for issues related to federal-state data exchange.

Daniel Riner, (410) 786–0237, for issues related to Physician Compare.

Ashley Hain, (410) 786–7603, for issues related to hospital public reporting.

Melissa Singer, (410) 786–0365, for issues related to provider directories.

CAPT Scott Cooper, USPHS, (410) 786–9465, for issues related to hospital and critical access hospital conditions of participation.

Lisa Bari, (410) 786–0087, for issues related to advancing interoperability in innovative models.

Russell Hendel, (410) 786–0329, for issues related to the Collection of Information or the Regulation Impact Analysis sections.

SUPPLEMENTARY INFORMATION: In the ''Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Interoperability and Patient Access for Medicare Advantage Organization and Medicaid Managed Care Plans, State Medicaid Agencies, CHIP Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans in the Federally-facilitated Exchanges and Health Care Providers'' proposed rule that appeared in the March 4, 2019 **Federal Register** (84 FR 7610), we solicited public comments on proposed policies that aim to move the health care ecosystem in the direction of interoperability, and to signal our commitment to the vision set out in the 21st Century Cures Act and Executive Order 13813 to improve access to, and the quality of, information that Americans need to make informed health care decisions, including data about health care prices and outcomes, while minimizing reporting burdens on affected plans, health care providers, or payers.

Since the issuance of the proposed rule, we have received inquiries from a variety of stakeholders, including healthcare provider organizations and industry representatives requesting an extension to the comment period. In order to maximize the opportunity for the public to provide meaningful input to CMS, we believe that it is important to allow additional time for the public to prepare comments on the proposed rule. In addition, we believe that granting an extension to the public comment period in this instance would further our overall objective to obtain public input on the proposed provisions to move the health care ecosystem in the direction of interoperability. Therefore, we are extending the comment period for the proposed rule for an additional 30 days.

While we believe it is in the best interest of the public and our proposed policies to extend the comment period for this proposed rule, we also acknowledge that stakeholders require appropriate implementation timelines that could be impacted by this extension. Therefore, we note that based on public comments received on this proposed rule, we will adjust the effective dates of our policies to allow for adequate implementation timelines as appropriate.

Dated: April 18, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–08181 Filed 4–19–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 170 and 171

RIN 0955–AA01

21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services (HHS).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 4, 2019, the Department of Health and Human Services (HHS) published a proposed rule that would implement certain provisions of the 21st Century Cures Act, including conditions and maintenance of certification requirements for health information technology (health IT) developers under the ONC Health IT Certification Program (Program), the voluntary certification of health IT for use by pediatric health care providers, and reasonable and necessary activities that do not constitute information blocking. The comment period for the rule was scheduled to close on May 3, 2019. This document extends the comment period for the

proposed rule by 30 days to June 3, 2019.

DATES: The comment period for the proposed rule published March 4, 2019, at 84 FR 7424, is extended. Comments must be received on or before June 3, 2019.

ADDRESSES: You may submit comments, identified by RIN 0955–AA01, by any of the following methods (please do not submit duplicate comments). Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

- *Federal eRulemaking Portal:* Follow the instructions for submitting comments. Attachments should be in Microsoft Word, Microsoft Excel, or Adobe PDF; however, we prefer Microsoft Word. *http://www.regulations.gov*.
- *Regular, Express, or Overnight Mail:* Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Attention: 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program Proposed Rule, Mary E. Switzer Building, Mail Stop: 7033A, 330 C Street SW, Washington, DC 20201. Please submit one original and two copies.
- *Hand Delivery or Courier:* Office of the National Coordinator for Health Information Technology, Attention: 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program Proposed Rule, Mary E. Switzer Building, Mail Stop: 7033A, 330 C Street SW, Washington, DC 20201. Please submit one original and two copies. (Because access to the interior of the Mary E. Switzer Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building.)

Enhancing the Public Comment Experience: To facilitate public comment on this proposed rule, a copy will be made available in Microsoft Word format on ONC's website (*http://www.healthit.gov*). We believe this version will make it easier for commenters to access and copy portions of the proposed rule for use in their individual comments. Additionally, a separate document (''public comment template'') is available on ONC's website (*http://www.healthit.gov*) for the public to use in providing comments on the proposed rule. This document is meant to provide the public with a simple and organized way to submit comments on proposals and respond to specific questions posed in the preamble of the proposed rule. While use of this document is entirely voluntary, we encourage commenters to consider using the document in lieu of unstructured comments, or to use it as an addendum to narrative cover pages. We believe that use of the document may facilitate our review and understanding of the comments received.

Inspection of Public Comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. Please do not include anything in your comment submission that you do not wish to share with the general public. Such information includes, but is not limited to: A person's social security number; date of birth; driver's license number; state identification number or foreign country equivalent; passport number; financial account number; credit or debit card number; any personal health information; or any business information that could be considered proprietary. We will post all comments that are received before the close of the comment period at *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Mary E. Switzer Building, Mail Stop: 7033A, 330 C Street SW, Washington, DC 20201 (call ahead to the contact listed below to arrange for inspection)..

FOR FURTHER INFORMATION CONTACT: Michael Lipinski, Office of Policy, Office of the National Coordinator for Health Information Technology, 202–690–7151.

SUPPLEMENTARY INFORMATION: In the ''21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program'' proposed rule that appeared in the March 4, 2019 **Federal Register** (84 FR 7424), we solicited public comments on proposals to implement certain provisions of the 21st Century Cures Act, including conditions and maintenance of certification requirements for health information technology (health IT) developers under the ONC Health IT Certification Program (Program), the voluntary certification of health IT for use by pediatric health care providers, and reasonable and necessary activities that do not constitute information blocking. The comment period for the rule was scheduled to close on May 3, 2019. This document extends the comment period for the proposed rule by 30 days until June 3, 2019.

To date, we have received comments from organizations with broad stakeholder representation requesting that we extend the 60-day comment period for the proposed rule. For example, we have received comments requesting more time from clinicians, hospitals, health IT developers and developer associations, professional societies, researchers, quality improvement organizations, health plans, and patient advocacy organizations. The commenters have stated that due to the depth and complexity of the policies proposed, it is critical for the public to have extended time in providing sufficient and thoughtful comments to advance shared goals and shape the interoperability landscape. Based on these public comments and the stated goals of the proposed rule to improve interoperability and patient access to health information for the purposes of promoting competition and better care, we are extending the comment period for the proposed rule for an additional 30 days.

Dated: April 18, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–08178 Filed 4–19–19; 8:45 am]

BILLING CODE 4150–45–P

Notices

Federal Register
Vol. 84, No. 78
Tuesday, April 23, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to AGROSOURCE, INC. of Tequesta, Florida, an exclusive license to U.S. Patent No. 9,629,362, ''METHODS FOR KILLING INSECTS USING METHYL BENZOATE,'' issued on APRIL 25, 2017.

DATES: Comments must be received on or before May 23, 2019.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Brian T. Nakanishi of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as AGROSOURCE, INC. of Tequesta, Florida has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2019–08123 Filed 4–22–19; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 17, 2019.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW, Washington, DC, 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by May 23, 2019. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service (NASS)

Title: List Sampling Frame Survey—Substantive Change.

OMB Control Number: 0535–0140.

Summary of Collection: General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204 which specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . . by the collection of statistics . . .''. The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies heavily on the use of sample surveys statistically drawn from the ''List Sampling Frame.'' The List Sampling Frame is a database of names and addresses, with control data, that contains the components values from which these samples can be drawn.

Most of the surveys that NASS conducts are based on multiple frame samples. This multi-frame concept currently involves a List Frame, which consists of names of all known farm operators, and an Area Frame, which consists of all land in the United States. The Area Frame is used to measure incompleteness in the List Frame.

Currently, NASS is approved to use web-scraping to identify potential farm operators who are not currently on the NASS List Frame. The substantive change that NASS is proposing, involves adding an additional questionnaire to the currently approved docket. This is being done through the June Area Research Project (JARP) pilot study. The new questionnaire that is being added, will be the second phase of the JARP study. This two-phased pilot study is designed to assess the viability of replacing or reducing the NASS Area Frame with a web-scraped List Frame for the June Area Survey (JAS). JARP's second phase

questionnaire will be administered via telephone, web and mail, thereby reducing or possibly eliminating the expensive in-person enumeration costs which are needed for the current Area Frame-based JAS.

The JARP study will be conducted in four states (Kansas, Nebraska, New York and Pennsylvania) in the summer of 2019. A parallel design study, also called a parallel group study, will be conducted. The ''control'' group will be the 2019 JAS sample, which will be drawn and analyzed using current production processes. The ''treatment'' group will be the sample collected within this pilot study. Data collected for JARP will be used to evaluate the efficacy of eliminating or reducing the need for NASS's Area Frame-based surveys.

This substantive change will add an additional 8,000 respondents and 1,697 hours of respondent burden to the currently approved totals.

Need and Use of the Information: The List Sampling Frame Surveys are used to develop and maintain a complete list of possible farm operations. Data from criteria surveys are used to provide control data for new records on the list sampling frame. This information is utilized to define the size of operation, define sample populations and establish eligibility for the Census of Agriculture. New names and addresses of potential farms are obtained on a regular basis from growers association, other government agencies and various outside sources. The goal is to produce for each State a relatively complete, current, and unduplicated list of names for statistical sampling for agricultural operation surveys and the Census of Agriculture. This information is used to develop efficient sample designs, which allows NASS the ability to draw reduced sample sizes from the originally large universe populations.

Description of Respondents: Farms.

Number of Respondents: 8,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,697.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–08091 Filed 4–22–19; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 18, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 23, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: 7 CFR 1730, Review Rating Summary.

OMB Control Number: 0572–0025.

Summary of Collection: The Rural Utilities Service (RUS) manages loan programs in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.,* as amended. An important part of safeguarding loan security is to see that RUS financed facilities are being responsible used, adequately operated, and adequately maintained. Future needs have to be anticipated to ensure that facilities will continue to produce revenue and loans will be repaid as required by the RUS mortgage. Regular periodic operations and maintenance (O&M) review can identify and correct inadequate O&M practices before they cause extensive harm to the system. Inadequate O&M practices can result in public safety hazards, increased power outages for consumers, added expense for emergency maintenance, and premature aging of the borrower's systems, which could increase the loan security risk to RUS.

Need and Use of the Information: RUS will collect information using form 300 Review Rate Summary to identity items that may be in need of additional attention; to plan corrective actions when needed; to budget funds and manpower for needed work; and to initiate ongoing programs as necessary to avoid or minimize the need for ''catch-up'' programs.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 156.

Frequency of responses: Reporting: On occasion.

Total Burden Hours: 624.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–08144 Filed 4–22–19; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Solicitation of Applications for the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program for Federal Fiscal Year 2019; Amendment

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of solicitation of applications; amendment.

SUMMARY: The Rural Business-Cooperative Service (the Agency) published a notice in the **Federal Register** on August 3, 2018, announcing the acceptance of applications for funds available under the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program for Fiscal Year (FY) 2019. The Agricultural Improvement Act of 2018 (2018 Farm Bill) provides funding for the program for FY 2019 and expands the eligible technology definition. This notice provides an amendment to Section III. Eligibility Information, subsection C. Eligible Projects, to include the definition.

FOR FURTHER INFORMATION CONTACT: For information about this Notice, please contact Aaron Morris, Assistant Deputy Administrator, USDA Rural Development, Energy Programs, 1400 Independence Avenue SW, Stop 3225, Room 6901, Washington, DC 20250. Telephone:(202) 720–1501. Email: *aaron.morris@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** on August 3, 2018 (83 FR 38119), make the following amendment:

In the third column on page 38120, under Section III Eligibility Information, subsection C. Eligible Projects, add the following:

In addition, the Agricultural Improvement Act of 2018 (2018 Farm Bill), amends the definition of 'eligible technology' to allow applicants to submit for funding projects for the development, construction and retrofitting of commercial-scale biorefineries using technologies that produce any 1 or more, or a combination, of an advanced biofuel, renewable chemical, or biobased product.

Bette B. Brand,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2019–08118 Filed 4–22–19; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Information Collection Activity; Comment Request

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Rural Business-Cooperative Service (RBS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by June 24, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Rural Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, Room 5164, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email *Thomas.dickson@usda.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Thomas P. Dickson, Rural Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, Room 5164, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email *Thomas.dickson@usda.gov*.

Title: Guaranteed Loanmaking and Servicing Regulations.

OMB Number: 0570–0069.

Type of Request: Extension of a currently approved information collection.

Abstract: The Business & Industry Guaranteed Loan Program is authorized under Section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to banks and other approved lenders to finance private businesses located in rural areas. The guaranteed loan program encourages lender participation and provides specific guidance in the processing and servicing of guaranteed loans. The regulations governing the Business & Industry Guaranteed Loan Program are codified at 7 CFR 4279. The required information, in the form of written documentation and Agency approved forms, is collected from applicants/borrowers, their lenders, and consultants. The collected information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan funds for authorized purposes. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, and/or unsound loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 13 hours per response.

Respondents: Business or other for profit; Not-for-profit institutions; State, Local or Tribal government.

Estimated Number of Respondents: 3,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 38,359 hours.

Copies of this information collection can be obtained from Thomas P. Dickson, Rural Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, Room 5164, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email *Thomas.dickson@usda.gov*. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Bette B. Brand,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2019–08168 Filed 4–22–19; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), and Rural Business-Cooperative Service (RBS), USDA.

ACTION: Notice of collection and comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named Agencies to request an extension for a currently approved information collection in support of debt settlement of Community Facilities and Direct Business Program Loans and Grants.

DATES: Comments on this notice must be received by June 24, 2019 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Thomas Dickson, Rural Development Innovation Center—Regulatory Team, U.S. Department of Agriculture, 1400 Independence Avenue SW, STOP 1522,

Washington, DC 20250, Telephone: 202–690–4492, email: *thomas.dickson@usda.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that Rural Development is submitting to OMB for extension.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Thomas P. Dickson, Rural Development Innovation Center—Regulatory, USDA, 1400 Independence Avenue SW, STOP 1522, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email *Thomas.dickson@usda.gov*.

Title: Debt Settlement-Community and Business Programs.

OMB Number: 0575–0124.

Type of Request: Extension of a currently approved information collection.

Abstract: The following Community and Direct Business Programs loans and grants are debt settled by this currently approved docket (0575–0124). The Community Facilities loan and grant program is authorized by Section 306 of the Consolidated Farm and Rural Development Act to make loans to public entities, nonprofit corporations, and Indian tribes through the Community Facilities program for the development of essential community facilities primarily serving rural residents.

The Economic Opportunity Act of 1964, Title 3, authorizes Economic Opportunity Cooperative loans to assist incorporated and unincorporated associations to provide low-income rural families essential processing, purchasing, or marketing services, supplies, or facilities.

The Food Security Act of 1985, Section 1323, authorizes loan guarantees and grants to Nonprofit National Corporations to provide technical and financial assistance to for-profit or nonprofit local businesses in rural areas.

The Business and Industry program is authorized by Section 310 B of the Consolidated Farm and Rural Development Act to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities, including pollution abatement control.

The Consolidated Farm and Rural Development Act, Section 310 B(c), authorizes Rural Business Enterprise Grants to public bodies and nonprofit corporations to facilitate the development of private businesses in rural areas.

The Consolidated Farm and Rural Development Act, Section 310 B(f)(i), authorized Rural Cooperative Development Grants to nonprofit institutions for the purpose of enabling such institutions to establish and operate centers for rural cooperative development.

The purpose of the debt settlement function for the above programs is to provide the delinquent client with an equitable tool for the compromise, adjustment, cancellation, or charge-off of a debt owed to the Agency.

The information collected is similar to that required by a commercial lender in similar circumstances.

Information will be collected by the field offices from applicants, borrowers, consultants, lenders, and attorneys.

Failure to collect information could result in improper servicing of these loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6.2 hours per response.

Respondents: Public bodies and nonprofit organizations.

Estimated Number of Respondents: 23.

Estimated Number of Responses per Respondent: 7.1.

Estimated Number of Responses: 163.

Estimated Total Annual Burden on Respondents: 1,005 hours.

Copies of this information collections can be obtained from Diane M. Berger, Rural Development Innovation Center—Regulatory Team; phone—(715) 619–3124; or email *diane.berger@usda.gov*.

Richard A. Davis,

Acting Administrator, Rural Housing Service.

[FR Doc. 2019–08142 Filed 4–22–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Broadband Pilot Program—ReConnect Program

AGENCY: Rural Utilities Service, Department of Agriculture.

ACTION: Notice; announcement of opening date for Rural e-Connectivity Pilot Program application windows.

SUMMARY: The Rural Utilities Service (RUS) announced its general policy and application procedures for funding under the eConnectivity Pilot Program (ReConnect Program) in a Funding Opportunity Announcement (FOA) and solicitation of applications on December 14, 2018 in the **Federal Register** and amended the application window closing dates in a notice published on February 25, 2019 in the **Federal Register**. The Reconnect Program will provide loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas. This Notice announces the opening date for the ReConnect Program application windows.

DATES: The Agency will begin accepting applications through *https://reconnect.usda.gov* for all three ReConnect Program funding categories on April 23, 2019. Please note that each funding category has a different application deadline (as referenced in Section II of Supplementary Information). Please refer to the specific funding category for the appropriate application dates.

ADDRESSES: *Application Submission:* The application system for electronic submissions is available at *https://reconnect.usda.gov*.

Electronic submissions: Electronic submissions of applications will allow for the expeditious review of an Applicant's proposal. As a result, all Applicants must file their application electronically.

FOR FURTHER INFORMATION CONTACT: For general inquiries regarding the ReConnect Program, contact Chad Parker, Assistant Administrator Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture (USDA), email: *chad.parker@wdc.usda.gov,* telephone

(202) 720–9554. You may obtain additional information regarding applications or submit requests for technical assistance at *https://www.usda.gov/reconnect/contact-us*.

SUPPLEMENTARY INFORMATION:

Authority: This solicitation is issued pursuant to the Consolidated Appropriations Act, 2018, Public Law 115–141, and the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq*.

Overview

Federal Agency: Rural Utilities Service, USDA.

Funding Opportunity Title: Rural eConnectivity Pilot Program (ReConnect Program).

Announcement Type: Announcement of Opening Date for Rural e-Connectivity Pilot Program Application Windows (FOA published in the **Federal Register** on December 14, 2018.)

Catalog of Federal Domestic Assistance (CFDA) Number: Rural eConnectivity Pilot Program (ReConnect Program)—10.752.

I. Background

On March 23, 2018, Congress passed the Consolidated Appropriations Act 2018, which established a broadband loan and grant pilot program, the ReConnect Program. One of the essential goals of the ReConnect Program is to expand broadband service to rural areas without sufficient access to broadband, defined as 10 megabits per second (Mbps) downstream and 1 Mbps upstream. For this purpose, Congress provided RUS with $600 million and expanded its existing authority to make loans and grants.

On December 14, 2018, RUS published a Funding Opportunity Announcement (FOA) and solicitation of applications in the **Federal Register** at 83 FR 64315. The FOA provided the policy and application procedures for the ReConnect Program. On February 25, 2019, RUS published a notice announcing the application deadlines in the **Federal Register** at 84 FR 5981. The agency is publishing this notice to provide the date that the application windows will open.

Since the publication of the December 14, 2018 FOA, the 2019 Appropriations Act became law on February 15, 2019. The 2019 Appropriations Act requires that the Agency shall, in determining whether an entity may overbuild, or duplicate broadband expansion efforts made by any entity that has received a broadband loan from RUS, not consider loans that were rescinded or defaulted on, or whose loan terms and conditions were not met, if the new entity under consideration has not previously defaulted on, or failed to meet the terms and conditions of, an RUS loan or had an RUS loan rescinded. To address these issues, the actions taken in the Notice published in the **Federal Register** (84 FR 14911) on April 12, 2019: (1) Revises the definition of Broadband loan in the FOA, as published in the **Federal Register** on December 14, 2018, as required by the 2019 Appropriations Act; (2) describes any changes to the data used in the protected broadband service areas mapping layer and, (3) announces the criteria by which applicants may challenge the determination of service area eligibility. These actions were taken by the Agency to ensure that all eligible service areas receive fair consideration for funding under the ReConnect Program.

Telecommunications companies, rural electric cooperatives and utilities, internet service providers and municipalities may apply for funding through the ReConnect Program to connect rural areas that do not have sufficient broadband service. Funds will be awarded to projects that have financially sustainable business models that will bring high-speed broadband to rural homes, businesses, farms, ranches and community facilities, such as first responders, health care sites, and schools. The ReConnect Program enables USDA to create and implement innovative solutions to rural connectivity by providing various financial options to our partners and customers.

II. Funding Categories and Application Submission Dates

A. Funding Categories

1. 100 Percent Loan

Applications will be accepted on a rolling basis from April 23, 2019 through July 12, 2019. If two loan applications are received for the same proposed funded service area, the application that arrives first will be considered first.

2. 50 Percent Loan/50 Percent Grant Combination

Applications will be accepted from April 23, 2019 through June 21, 2019. Notwithstanding overlapping applications, generally all eligible applications will be scored and the applications with the highest score will receive an award offer until all funds are expended for this category. Scoring criteria was established in the **Federal Register** FOA on December 14, 2018 and can also be found on the website *https://reconnect.usda.gov*.

3. 100 Percent Grant

Applications will be accepted from April 23, 2019 through May 31, 2019. Notwithstanding overlapping applications, generally all eligible applications will be scored and the applications with the highest score will receive an award offer until all funds are expended for this category. Scoring criteria was established in the FOA, published in **Federal Register** on December 14, 2018, and can also be found on the website *https://reconnect.usda.gov*.

B. Available Funds

USDA is making available up to $200 million in in program level for grants, $200 million in program level for loan and grant combinations, and $200 million in program level for low-interest loans. RUS retains the discretion to divert funds from one funding category to another.

III. Program Requirements

To be eligible for an award, applications must meet all the requirements contained in the FOA published in the **Federal Register** on December 14, 2018 at 83 FR 64315. Information can also be found at *https://reconnect.usda.gov*.

Chad Rupe,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2019–08176 Filed 4–22–19; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–097 and C–570–098]

Polyester Textured Yarn From the People's Republic of China: Preliminary Affirmative Determinations of Critical Circumstances in the Antidumping and Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that critical circumstances exist with respect to all imports of polyester textured yarn (yarn) from the People's Republic of China (China).

DATES: Applicable April 23, 2019.

FOR FURTHER INFORMATION CONTACT: George Ayache, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue

NW, Washington, DC 20230; telephone (202) 482–2623.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2018, Commerce received antidumping duty (AD) and countervailing duty (CVD) petitions concerning imports of yarn from China filed in proper form on behalf of Unifi Manufacturing, Inc. and Nan Ya Plastics Corp. America (the petitioners).[1] On November 19, 2018, we published the notices of initiation of the AD and CVD investigations.[2]

In the AD investigation, Commerce selected Fujian Billion Polymerization Fiber Technology Industrial Co., Ltd. (Fujian Billion), Fujian Zhengqi High Tech Fiber, and Suzhou Shenghong Fiber Co., Ltd. (Suzhou Shenghong) as the respondents for individual examination.[3] In the CVD investigation, Commerce selected Fujian Billion, Jiangsu Shenghong Textile Imp & Exp Co., Suzhou Shenghong, and Suzhou Shenghong Garmant Development Co.[4] On April 2, 2019, the petitioners alleged that critical circumstances exist with respect to imports of yarn from China, pursuant to sections 703(e)(1) and 733(e)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.206.[5]

In accordance with 19 CFR 351.206(c)(2)(i), if the petitioner submits an allegation of critical circumstances more than 20 days before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist by no later than the date of the preliminary determination.[6] In these AD and CVD investigations, the petitioners requested that Commerce issue preliminary critical circumstances determinations on an expedited basis.[7]

Section 703(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will preliminarily determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect that: (A) ''the alleged countervailable subsidy'' is inconsistent with the Subsidies and Countervailing Measures (SCM) Agreement of the World Trade Organization; and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will preliminarily determine that critical circumstances exist in AD investigations if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

Sections 351.206(h)(2) and (i) of Commerce's regulations provide that imports must increase by at least 15 percent during the ''relatively short period'' to be considered ''massive'' and defines a ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.,* the date the petition is filed) and ending at least three months later. Commerce's regulations also provide, however, that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.[8]

Critical Circumstances Analysis

Alleged Countervailable Subsidies Are Inconsistent With the SCM Agreement

To determine whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, Commerce considered the evidence currently on the record of the CVD investigation. Specifically, as reflected in the initiation checklist, the following subsidy programs, alleged in the Petitions and supported by information reasonably available to the petitioners, appear to be either export contingent or contingent upon the use of domestic goods over imported goods, which would render them inconsistent with the SCM Agreement:[9]

- Export Loans from Chinese State-Owned Banks
- Export Seller's Credit
- Export Buyer's Credit
- Export Credit Guarantees
- GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands
- SME International Market Exploration/Development Fund
- Export Assistance Grants
- VAT Refunds for FIEs Purchasing Domestically-Produced Equipment

Therefore, Commerce preliminarily determines that there is a reasonable basis to believe or suspect that alleged subsidies in the CVD investigation are inconsistent with the SCM Agreement.

History of Dumping and Material Injury/ Knowledge of Sales Below Fair Value and Material Injury

To determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders imposed by other countries regarding imports of the same merchandise. However, in the Critical Circumstances Allegation, the petitioners did not provide information on the history of dumping.[10]

To determine whether importers knew or should have known that exporters were selling the subject merchandise at less than fair value pursuant to section 733(e)(1)(A)(ii) of the Act, we typically consider the magnitude of dumping margins, including margins alleged in petitions.[11]

[1] *See* the petitioners' letter, ''Polyester Textured Yarn from the People's Republic of China and India—Petition for the Imposition of Antidumping and Countervailing Duties,'' dated October 18, 2018 (Petitions).

[2] *See Polyester Textured Yarn from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations,* 83 FR 58223 (November 19, 2018); *see also Polyester Textured Yarn from India and the People's Republic of China: Initiation of Countervailing Duty Investigations,* 83 FR 58232 (November 19, 2018).

[3] *See* Memorandum, ''Less-Than-Fair-Value Investigation of Polyester Textured Yarn from the People's Republic of China: Respondent Selection,'' dated December 11, 2018.

[4] *See* Memorandum, ''Countervailing Duty Investigation of Polyester Textured Yarn from the People's Republic of China: Respondent Selection,'' dated December 11, 2018.

[5] *See* the petitioners' letter, ''Polyester Textured Yarn from the People's Republic of China—Petitioners' Allegation of Critical Circumstances,'' dated April 2, 2018 (Critical Circumstances Allegation).

[6] The preliminary determination for the AD investigation is currently due no later than June 25, 2019, and the preliminary determination for the CVD investigation is currently due no later than April 26, 2019.

[7] *See* Critical Circumstances Allegation at 3–5.

[8] *See* 19 CFR 351.206(i).

[9] *See* CVD Initiation Checklist: Polyester Textured Yarn from the People's Republic of China, dated November 7, 2018.

[10] *See* Critical Circumstances Allegation at 5–7.

[11] *See, e.g., Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation,* 67 FR 19157, 19158 (April 18, 2002) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Australia,* 67 FR

Continued

Commerce has found margins of 15 percent or more (for constructed export price) to 25 percent or more (for export price) to be sufficient for this purpose.[12] The dumping margins of 74.98 percent and 77.15 percent alleged in the AD Petition Supplement significantly exceed the 15 to 25 percent threshold.[13] Therefore, on that basis, we preliminarily conclude importers knew, or should have known, that exporters in China were selling at less than fair value.

To determine whether importers knew, or should have known, that there was likely to be material injury caused by reason of such imports pursuant section 733(e)(1)(A)(ii) of the Act, Commerce normally will look to the preliminary injury determination of the International Trade Commission (ITC).[14] If the ITC finds a reasonable indication of material injury to the relevant U.S. industry, Commerce will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports. In these investigations, the ITC found that there is a ''reasonable indication'' of material injury to the domestic industry because of the imported subject merchandise.[15] Therefore, the ITC's preliminary injury determination in the AD investigation is sufficient to impute importer knowledge.

Massive Imports

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to sections 703(e)(1)(B) and 733(e)(1)(B) of the Act, Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.,* the ''base period'') to a comparable period of at least three months following the filing of the petition (*i.e.,* the ''comparison period'').[16] Imports will normally be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.[17]

Accordingly, to determine preliminarily whether there has been a massive surge in imports for each mandatory respondent which provided shipment data, Commerce compared the total volume of shipments from November 2018 through January 2019, the comparison period (*i.e.,* all months for which shipment data was available), with the preceding three-month period of August 2018 through October 2018, the base period. Regarding the CVD investigation, for ''all others,'' Commerce compared Global Trade Atlas (GTA) data for the period November 2018 through January 2019 with the preceding three-month period of August 2018 through October 2018,[18] after subtracting from the GTA data shipments reported by the mandatory respondents which provided such data. Similarly, regarding the AD investigation, for non-individually examined companies requesting separate rate status, we performed the same comparison. For those mandatory respondents in either the CVD or AD investigation that are not participating in the investigation, we preliminarily determine, on the basis of adverse facts available,[19] that there has been a massive surge in imports. Accordingly, based on our analysis of information on the record, we preliminarily determine that all producers/exporters of yarn from China had massive surges in imports.[20]

Based on the criteria and findings discussed above, we preliminarily determine in both the AD and CVD investigations that critical circumstances exist with respect to all imports of yarn from China.

Final Critical Circumstances Determination

We will issue our final determinations concerning critical circumstances when we issue our final CVD and AD determinations. All interested parties will have the opportunity to address this determination in case briefs to be submitted after the completion of the preliminary CVD and AD determinations by a deadline to be established at a later date.

ITC Notification

In accordance with sections 703(f) and 733(f) of the Act, we will notify the ITC of these preliminary determinations of critical circumstances.

Suspension of Liquidation

In accordance with section 703(e)(2) of the Act, because we have preliminarily found that critical circumstances exist with regard to imports from all producers and exporters of yarn from China, if we make an affirmative preliminary determination that countervailable subsidies have been provided to these same producers/exporters at above *de minimis* rates, we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from these producers/exporters that are entered, or withdrawn from warehouse for consumption, on or after the date that is 90 days prior to the effective date of ''provisional measures'' (*e.g.,* the date of publication in the **Federal Register** of the notice of an affirmative preliminary determination that countervailable subsidies have been provided at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the estimated preliminary subsidy rates reflected in the preliminary determination published in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

In accordance with section 733(e)(2) of the Act, because we have preliminarily found that critical circumstances exist with regard to imports from all producers and

47509 (July 19, 2002), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from the People's Republic of China,* 67 FR 62107 (October 3, 2002), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from India,* 67 FR 47518 (July 19, 2002), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea,* 67 FR 62124 (October 3, 2002), *Notice of Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from The Netherlands,* 67 FR 62112 (October 3, 2002), *Notice of the Final Determination Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from the Russian Federation,* 67 FR 62121 (October 3, 2002)).

[12] *Id.*

[13] *See* the petitioners' letter, ''Polyester Textured Yarn from the People's Republic of China—Petitioners' Supplement for Volume II Regarding China Antidumping Duties,'' dated October 29, 2018 (AD Petition Supplement), at 7 and Exhibit AD–PRC–Supp–5.

[14] *See, e.g., Antidumping and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada: Preliminary Determinations of Critical Circumstances,* 82 FR 19219, 19220 (April 26, 2017) (*Softwood Lumber from Canada Preliminary Critical Circumstances Determination*), unchanged in *Certain Softwood Lumber Products from Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 82 FR 51806, 51807–08 (November 8, 2017) (*Softwood Lumber from Canada Final AD Determination*).

[15] *See Polyester Textured Yarn from China and India: Investigation Nos. 701–TA–612–613 and 731–1429–1430 (Preliminary),* 83 FR 63532 (December 10, 2018).

[16] *See Softwood Lumber from Canada Preliminary Critical Circumstances Determination,* 82 FR at 19220, unchanged in *Softwood Lumber from Canada Final AD Determination,* 82 FR at 51807–08.

[17] *Id.*

[18] Commerce gathered GTA data under the following harmonized tariff schedule numbers: 5402.33.3000 and 5402.33.6000.

[19] *See* section 776 of the Act.

[20] *See* Memorandum, ''Polyester Textured Yarn from the People's Republic of China: Preliminary Critical Circumstances Calculation,'' dated concurrently with this notice.

exporters of yarn from China, if we make an affirmative preliminary determination that sales at less than fair value have been made by these same producers/exporters at above *de minimis* rates, we will instruct CBP to suspend liquidation of all entries of subject merchandise from these producers/exporters that are entered, or withdrawn from warehouse, for consumption on or after the date that is 90 days prior to the effective date of ''provisional measures'' (*e.g.,* the date of publication in the **Federal Register** of the notice of an affirmative preliminary determination of sales at LTFV at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the estimated preliminary dumping margins reflected in the preliminary determination published in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

These determinations are issued and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.206(c)(2).

Dated: April 18, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–08275 Filed 4–22–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–885, A–570–097]

Polyester Textured Yarn From India and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable April 23, 2019.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik at (202) 482–6905 (People's Republic of China (China)); Katherine Johnson at (202) 482–4929 (India), AD/CVD Operations, VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 2018, the Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of polyester textured yarn (yarn) from India and China.[1] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[2] Currently, the preliminary determinations of these LTFV investigations are due no later than May 6, 2019.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating and determines that (i) the investigation is extraordinarily complicated, and that (ii) additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On March 29, 2019, the petitioners[3] submitted a timely request that Commerce postpone the preliminary determinations in these LTFV investigations.[4] The petitioners stated that they requested postponement to allow Commerce time to gather all data and questionnaire responses and to allow Commerce and interested parties time to fully and properly analyze all record evidence.[5]

In accordance with 19 CFR 351.205(e), the petitioners have stated the reasons for requesting a postponement of the preliminary determinations, and Commerce finds no compelling reason to deny the request. Therefore, Commerce is postponing the deadline for the preliminary determinations by 50 days (*i.e.,* 190 days after the date on which these investigations were initiated, plus the 40 tolling days), in accordance with section 733(c)(1)(A) of the Act. As a result, Commerce will issue its preliminary determinations no later than June 25, 2019. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: April 16, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–08133 Filed 4–22–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Polyester Textured Yarn from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations,* 83 FR 58223 (November 19, 2018) (*Initiation Notice*).

[2] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in these LTFV investigations affected by the partial federal government closure have been extended by 40 days. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day.

[3] The petitioners are Unifi Manufacturing, Inc. and Nan Ya Plastics Corporation, America.

[4] *See* the Petitioners' Letter, ''Polyester Textured Yarn from China and India—Petitioners' Request to Extend the Preliminary Antidumping Duty Determinations,'' dated March 29, 2019.

[5] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain frozen warmwater shrimp (shrimp) from India is being, or is likely to be, sold in the United States at less than normal value during the period of review (POR) February 1, 2017, through January 31, 2018.

DATES: Applicable April 23, 2019.

FOR FURTHER INFORMATION CONTACT: Manuel Rey or Brittany Bauer, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5518 or (202) 482–3860, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on shrimp from India. The review covers six producers and/or exporters of the subject merchandise. Commerce selected two mandatory respondents for individual examination: Calcutta Seafoods Pvt. Ltd./Bay Seafood Pvt. Ltd./Elque & Co. (collectively, the Elque Group); and Magnum Sea Foods Limited/Magnum Estates Limited (collectively, Magnum). The POR is February 1, 2017, through January 31, 2018.

We preliminarily determine that sales to the United States have been made below normal value and, therefore, are subject to antidumping duties. If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. We invite all interested parties to comment on these preliminary results.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[1] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. Accordingly, the revised deadline for the preliminary results of this review is now April 9, 2019.

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[2] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive.

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. Because the Elque Group did not provide useable cost data, we preliminarily determine to apply adverse facts available (AFA) to this respondent, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308. For a full discussion of the rationale underlying our preliminary results, *see* the Preliminary Decision Memorandum.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached at the Appendix to this notice.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that weighted-average dumping margins exist for the respondents for the period February 1, 2017, through January 31, 2018, as follows:

Exporter/producer	Weighted-average dumping margin (percent)
Calcutta Seafoods Pvt. Ltd./Bay Seafood Pvt. Ltd./Elque & Co.	110.90
Magnum Sea Foods Limited/ Magnum Estates Limited	1.87

Review-Specific Average Rate Applicable to the Following Companies: [3]

Exporter/producer	Weighted-average dumping margin (percent)
Blue-Fin Frozen Foods Pvt. Ltd	1.87
Crystal Sea Foods Private Limited	1.87
Forstar Frozen Foods Pvt. Ltd ...	1.87
Milsha Agro Exports Pvt. Ltd	1.87

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[4] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[5] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[6] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[7] Case and rebuttal briefs should be filed using ACCESS.[8]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[9] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[10]

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, not later than 120 days after the publication date

[1] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[2] For a complete description of the Scope of the Order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[4] *See* 19 CFR 351.224(b).

[5] *See* 19 CFR 351.309(c).

[6] *See* 19 CFR 351.309(d).

[7] *See* 19 CFR 351.309(c)(2) and (d)(2).

[8] *See* 19 CFR 351.303.

[9] *See* 19 CFR 351.310(c).

[10] *Id.*

of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[11] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review. Where assessments are based upon total facts available, including AFA, we will instruct CBP to assess duties at the AFA margin rate.

Pursuant to 19 CFR 351.212(b)(1), because Magnum reported the entered value for all of its U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the average [12] of the cash deposit rates calculated for the companies selected for mandatory review (*i.e.,* the Elque Group and Magnum), excluding any which are *de minimis* or determined entirely on adverse facts available. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[13]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate made effective by the LTFV investigation.[14] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 9, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2019–08270 Filed 4–22–19; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* 19 CFR 351.212(b)(1).

[12] This rate will be calculated as discussed in the ''Preliminary Results of the Review'' section, above.

[13] *See* section 751(a)(2)(C) of the Act.

[14] *See Notice of Amended Final Determination of Sale at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147 (February 1, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–508–812]

Magnesium From Israel: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable April 23, 2019.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen at (202) 482–3683, or Minoo Hatten at (202) 482–1690, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 2018, the Department of Commerce (Commerce) initiated the less-than-fair-value (LTFV) investigation of imports of magnesium from Israel.[1] Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from December 22, 2018, through January 28, 2019.[2] Accordingly, the revised deadline for the preliminary

[1] *See Magnesium From Israel: Initiation of Less-Than-Fair-Value Investigation,* 83 FR 58533 (November 20, 2018) (*Initiation Notice*).

[2] *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

determination in this investigation is May 13, 2019.[3]

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner[4] makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On April 9, 2019, the petitioner submitted a timely request that Commerce postpone the preliminary determination in this LTFV investigation.[5] The petitioner stated that it requests postponement of the preliminary determination of this investigation because the initial questionnaire responses submitted by Dead Sea Magnesium, Ltd. are substantially deficient and it may not be possible for Commerce to obtain usable corrected responses within the current schedule.[6]

Because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determination by 50 days (*i.e.,* 190 days after the date on which this investigation was initiated plus 40 days for tolling). As a result, Commerce will issue its preliminary determination no later than July 1, 2019. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of publication of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: April 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–08134 Filed 4–22–19; 8:45 am]

BILLING CODE 3510–DS–P

[3] The deadline for the preliminary determination is normally 140 days after we initiate an investigation. After tolling, this date is May 12, 2019, which is a Sunday. Commerce practice dictates that where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day (in this instance, May 13, 2019). *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[4] The petitioner is US Magnesium LLC.

[5] *See* Letter from the petitioner, ''Re: Magnesium from Israel: Petitioner's Request For Postponement Of The Preliminary Determination,'' dated April 9, 2019 (Request for Postponement).

[6] *See* Request for Postponement.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG982

Workshop on Atlantic Bluefin Tuna Management Strategy Evaluation

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of workshop.

SUMMARY: The University of Massachusetts Dartmouth, School for Marine Science and Technology and the Gulf of Maine Research Institute are hosting a workshop on ''Stakeholder Engagement in Management Strategy Evaluation of Atlantic Bluefin Tuna Fisheries.'' This educational workshop is supported with NMFS funding through the Bluefin Tuna Research Program and is open to the public.

DATES: A workshop will be held on April 29, 2019, from 10 a.m. to 5 p.m. EDT and April 30, 2019, from 9 a.m. to 12 p.m. EST.

ADDRESSES: The workshop will take place at University of Massachusetts Dartmouth, School for Marine Science and Technology, 836 South Rodney French Boulevard, New Bedford, MA, Rooms 101–103.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Cadrin, *scadrin@umassd.edu* or (508) 910–6358.

SUPPLEMENTARY INFORMATION:

Management strategy evaluation (MSE) is a process that allows fishery managers and stakeholders (*e.g.,* industry, scientists, and non-governmental organizations) to assess how well different management strategies, achieve specified objectives for a fishery. The International Commission for the Conservation of Atlantic Tunas (ICCAT) has been engaged in developing an MSE for bluefin tuna. The United States participates in this MSE development and has been considering stakeholder input throughout that development through established procedures, including consultation with the ICCAT Advisory Committee and coordination with NMFS's Highly Migratory Species (HMS) Division and the HMS Advisory Panel. The United States also participates in the development of the MSE through U.S. scientists' participation in development of the MSE framework through ICCAT's Standing Committee on Research and Statistics (SCRS).

This educational workshop is intended to explain to a broader stakeholder audience the concept of MSE as a tool for fisheries management, describe the MSE approach being developed by ICCAT, and present preliminary demonstrations as an illustration of MSE for Atlantic bluefin tuna. One goal is to solicit feedback from U.S. fishery stakeholders on how scientists represent the Atlantic bluefin resource and fisheries in models, fishery management objectives, management performance indicators, and candidate management procedures. The workshop will primarily be informational and educational, and there will be no binding decisions or formal consensus-based recommendations. While discussions at the workshop will help to inform U.S. scientists who are participating in work of ICCAT's SCRS, recommendations directly affecting the United States' position development and input to the MSE will continue to occur through established procedures. This workshop is intended to complement, not replace, existing opportunities for U.S. stakeholder input. Limited funding is available to support travel to this workshop for Atlantic bluefin tuna stakeholders. For more information, contact Dr. Steven Cadrin.

Dated: April 17, 2019.

Paul Doremus,

Acting Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2019–08098 Filed 4–22–19; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 84 FR 16006, April 17, 2019.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Tuesday, April 23, 2019.

CHANGES IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

Dated: April 19, 2019.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2019–08321 Filed 4–19–19; 4:15 pm]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2019–0019]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is proposing to revise an existing information collection titled, ''Joint Standards for Assessing the Diversity Policies and Practices.''

DATES: Written comments are encouraged and must be received on or before May 23, 2019 to be assured of consideration.

ADDRESSES: Comments in response to this notice are to be directed towards OMB and to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: OIRA_submission@omb.eop.gov*.
- *Fax:* (202) 395–5806.
- *Mail:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link becomes active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under review, use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov*. Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov*. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*. Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Joint Standards for Assessing the Diversity Policies and Practices.

OMB Control Number: 3170–0060.

Type of Review: Extension without change of a currently approved information collection.

Affected Public: Businesses and other for-profit entities.

Estimated Number of Respondents: 750.

Estimated Total Annual Burden Hours: 9,000.

Abstract: Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Act) required the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Bureau of Consumer Financial Protection (Bureau) and Securities and Exchange Commission (SEC) (together, Agencies and separately, Agency) each to establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters of the Agency relating to diversity in management, employment, and business activities. The Act also instructed each OMWI Director to develop standards for assessing the diversity policies and practices of entities regulated by the Agency. The Agencies worked together to develop joint standards (Joint Standards) and, on June 10, 2015, they jointly published in the **Federal Register** the ''Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies'' (Policy Statement). The Agencies will use the information provided to them to monitor progress and trends in the financial services industry with regard to diversity and inclusion in employment and contracting activities, as well as to identify and highlight those policies and practices that have been successful. The primary federal financial regulator will share information with other agencies, when appropriate, to support coordination of efforts and to avoid duplication. The Agencies may publish information disclosed to them, such as best practices, in any form that does not identify a particular entity or individual or disclose confidential business information. This is a routine request for OMB to renew its approval of the collections of information currently approved under this OMB control number.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on February 4, 2019, 84 FR 1429, Docket Number: CFPB–2019–0001. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: April 17, 2019.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019–08094 Filed 4–22–19; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0051]

Agency Information Collection Activities; Comment Request; Consolidated State Performance Report Renewal (Part 1 and Part 2)

AGENCY: Department of Education (ED), Office of Elementary and Secondary Education (OESE).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 24, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0051. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov*. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Sarah Newman, 202–453–6956.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Consolidated State Performance Report Renewal (Part 1 and Part 2).

OMB Control Number: 1810–0724.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 14,653.

Total Estimated Number of Annual Burden Hours: 16,455.

Abstract: The Consolidated State Performance Report (CSPR) is the required annual reporting tool for each State, the Bureau of Indian Education, District of Columbia, and Puerto Rico as authorized under Section 8303 of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA). The CSPR collects data on programs authorized by:

- Title I, Part A;
- Title I, Part C;
- Title I, Part D;
- Title II, Part A;
- Title III, Part A;
- Title IV Part A;
- Title V, Part A;
- Title V, Part B, Subparts 1 and 2; and
- The McKinney-Vento Act.

The information in this collection relate to the performance and monitoring activities of the aforementioned programs under ESSA and the McKinney-Vento Act. These data are needed for reporting on GPRA as well as other reporting requirements under ESSA.

There is one major change from the last approved collection. Reporting requirements on Title IV, Part A have been added to the collection.

Dated: April 17, 2019

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–08078 Filed 4–22–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–78–000.

Applicants: Noverco Inc., Valener Inc.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Noverco Inc., et al.

Filed Date: 4/17/19.

Accession Number: 20190417–5101.

Comments Due: 5 p.m. ET 5/8/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1179–000.

Applicants: AES ES Gilbert, LLC.

Description: Second Supplement to March 4, 2019 AES ES Gilbert, LLC tariff filing.

Filed Date: 4/16/19.

Accession Number: 20190416–5132.

Comments Due: 5 p.m. ET 4/30/19.

Docket Numbers: ER19–1279–001.

Applicants: Messer Energy Services, Inc.

Description: Tariff Amendment: First Amendment to Notice of Succession to be effective 3/1/2019.

Filed Date: 4/16/19.

Accession Number: 20190416–5181.

Comments Due: 5 p.m. ET 5/7/19.

Docket Numbers: ER19–1582–000.

Applicants: DTE Electric Company.

Description: § 205(d) Rate Filing: Revised Wholesale Distribution Agreements to be effective 1/1/2019.

Filed Date: 4/16/19.

Accession Number: 20190416–5145.

Comments Due: 5 p.m. ET 5/7/19.

Docket Numbers: ER19–1583–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA/ISA No. 4948; Queue No. AD1–053 to be effective 5/6/2019.

Filed Date: 4/16/19.

Accession Number: 20190416–5146.

Comments Due: 5 p.m. ET 5/7/19.

Docket Numbers: ER19–1584–000.

Applicants: Armadillo Flats Wind Project, LLC.

Description: Market-Based Triennial Review Filing: Armadillo Flats Wind Project, LLC Triennial Amend to Market-Based Rate Tarif to be effective 4/17/2019.

Filed Date: 4/16/19.

Accession Number: 20190416–5187.

Comments Due: 5 p.m. ET 5/7/19.

Docket Numbers: ER19–1585–000.

Applicants: Brady Interconnection, LLC.

Description: Market-Based Triennial Review Filing: Brady Interconnection, LLC Triennial Amendment to Market-Based Rate Tariff to be effective 4/17/2019.

Filed Date: 4/16/19.

Accession Number: 20190416–5188.
Comments Due: 5 p.m. ET 5/7/19.

Docket Numbers: ER19–1586–000.
Applicants: Brady Wind II, LLC.
Description: Market-Based Triennial Review Filing: Brady Wind II, LLC Triennial Amendment to Market-Based Rate Tariff to be effective 4/17/2019.
Filed Date: 4/16/19.
Accession Number: 20190416–5189.
Comments Due: 5 p.m. ET 5/7/19.

Docket Numbers: ER19–1587–000.
Applicants: Brady Wind, LLC.
Description: Market-Based Triennial Review Filing: Brady Wind, LLC Triennial Amendment to Market-Based Rate Tariff to be effective 4/17/2019.
Filed Date: 4/16/19.
Accession Number: 20190416–5190.
Comments Due: 5 p.m. ET 5/7/19.

Docket Numbers: ER19–1588–000.
Applicants: Breckinridge Wind Project, LLC.
Description: Market-Based Triennial Review Filing: Breckinridge Wind Project, LLC Triennial Amend to Market-Based Rate Tariff to be effective 4/17/2019.
Filed Date: 4/16/19.
Accession Number: 20190416–5191.
Comments Due: 5 p.m. ET 5/7/19.

Docket Numbers: ER19–1589–000.
Applicants: Cedar Bluff Wind, LLC.
Description: Market-Based Triennial Review Filing: Cedar Bluff Wind, LLC Triennial Amendment to Market-Based Rate Tariff to be effective 4/17/2019.
Filed Date: 4/16/19.
Accession Number: 20190416–5192.
Comments Due: 5 p.m. ET 5/7/19.

Docket Numbers: ER19–1590–000.
Applicants: Chaves County Solar, LLC.
Description: Market-Based Triennial Review Filing: Chaves County Solar, LLC Triennial Amendment to Market-Based Rate Tariff to be effective 4/17/2019.
Filed Date: 4/16/19.
Accession Number: 20190416–5193.
Comments Due: 5 p.m. ET 5/7/19.

Docket Numbers: ER19–1591–000.
Applicants: Cottonwood Wind Project, LLC.
Description: Market-Based Triennial Review Filing: Cottonwood Wind Project, LLC Amendment to Market-Based Rate Tariff to be effective 4/17/2019.
Filed Date: 4/16/19.
Accession Number: 20190416–5194.
Comments Due: 5 p.m. ET 5/7/19.

Docket Numbers: ER19–1592–000.
Applicants: Elk City Renewables II, LLC.
Description: Market-Based Triennial Review Filing: Elk City Renewables II, LLC Triennial Amentment to Market-Based Rate Tariff to be effective 4/17/2019.
Filed Date: 4/16/19.
Accession Number: 20190416–5195.
Comments Due: 5 p.m. ET 5/7/19.

Docket Numbers: ER19–1593–000.
Applicants: Kingman Wind Energy I, LLC.
Description: Market-Based Triennial Review Filing: Kingman Wind Energy I, LLC Triennial Amendment to Market-Based Rate Tariff to be effective 4/17/2019.
Filed Date: 4/16/19.
Accession Number: 20190416–5196.
Comments Due: 5 p.m. ET 5/7/19.

Docket Numbers: ER19–1594–000.
Applicants: Kingman Wind Energy II, LLC.
Description: Market-Based Triennial Review Filing: Kingman Wind Energy II, LLC Triennial Amendment to Market-Based Rate Tariff to be effective 4/17/2019.
Filed Date: 4/16/19.
Accession Number: 20190416–5197.
Comments Due: 5 p.m. ET 5/7/19.

Docket Numbers: ER19–1595–000.
Applicants: Pine River Wind Energy LLC.
Description: Tariff Cancellation: Notice of Cancellation of Market-Based Rate Tariff to be effective 6/17/2019.
Filed Date: 4/17/19.
Accession Number: 20190417–5042.
Comments Due: 5 p.m. ET 5/8/19.

Docket Numbers: ER19–1596–000.
Applicants: Midcontinent Independent System Operator, Inc., Duke Energy Indiana, LLC.
Description: § 205(d) Rate Filing: 2019–04–17_SA 3297 DEI-City of Logansport, Indiana IA to be effective 7/1/2019.
Filed Date: 4/17/19.
Accession Number: 20190417–5057.
Comments Due: 5 p.m. ET 5/8/19.

Docket Numbers: ER19–1597–000.
Applicants: AES Integrated Energy, LLC.
Description: Baseline eTariff Filing: AES Integrated Energy, LLC MBR Application to be effective 6/17/2019.
Filed Date: 4/17/19.
Accession Number: 20190417–5071.
Comments Due: 5 p.m. ET 5/8/19.

Docket Numbers: ER19–1598–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–04–17_SA 3081 UMERC–ATC 1st Rev GIA (J704) to be effective 4/3/2019.
Filed Date: 4/17/19.
Accession Number: 20190417–5089.
Comments Due: 5 p.m. ET 5/8/19.

Docket Numbers: ER19–1599–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Recollation Filing of sections Schedule 12—Appendices and Attachment H to be effective 4/18/2019.
Filed Date: 4/17/19.
Accession Number: 20190417–5129.
Comments Due: 5 p.m. ET 5/8/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–08112 Filed 4–22–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any

responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202)502–8659.

Docket No.	File date	Presenter or requester
Prohibited		
1. ER19–603–000	4/3/2019	Donald H. Albertson.
2. P–2305–000	4/3/2019	Lower Sabine River Basin Board.
Exempt		
1. CP17–41–000	4/3/2019	FERC Staff.[1]
2. CP17–41–000	4/12/2019	U.S. House of Representative Darin LaHood.
3. CP17–495–000	4/12/2019	U.S. Congressmen.[2]

[1] Communications Memorandum dated 4/3/19 forwarding email correspondence with Dana Bethea of National Oceanic Atmosphere Administration.

[2] Congressmen Ron Wyden and Peter DeFazio.

Dated: April 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–08115 Filed 4–22–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–1126–000.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Annual Report of Transportation Imbalances and Cash-out Activity of Cameron Interstate Pipeline, LLC.

Filed Date: 4/15/19.

Accession Number: 20190415–5296.

Comments Due: 5 p.m. ET 4/29/19.

Docket Numbers: RP19–1127–000.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Annual Report of Operational Imbalances and Cash-out Activity of Cameron Interstate Pipeline, LLC.

Filed Date: 4/15/19.

Accession Number: 20190415–5297.

Comments Due: 5 p.m. ET 4/29/19.

Docket Numbers: RP19–1128–000.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Annual Report of Penalty Revenues of Cameron Interstate Pipeline, LLC.

Filed Date: 4/15/19.

Accession Number: 20190415–5298.

Comments Due: 5 p.m. ET 4/29/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–08114 Filed 4–22–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2016–0178; FRL–9992–55–OW]

Proposed Information Collection Request; Comment Request; EPA Application Materials for the Water Infrastructure Finance and Innovation Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''EPA Application Materials for the Water Infrastructure Finance and Innovation Act'' (EPA ICR No. 2549.02, OMB Control No. 2040–0292) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a

request for approval of a renewal. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 24, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2016–0178, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Arielle Gerstein, Water Infrastructure Division, Office of Wastewater Management, 4201–T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–1868; email address: *gerstein.arielle@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The collection of information is necessary in order to receive applications for credit assistance pursuant to section 5024 of the Water Infrastructure Finance and Innovation Act (WIFIA) of 2014, *33 U.S.C. 3903*. The purpose of the WIFIA program is to provide Federal credit assistance in the form of direct loans and loan guarantees to eligible clean water and drinking water projects.

WIFIA requires that an eligible entity submit to the EPA Administrator an application at such time, in such manner, and containing such information, as the EPA Administrator *may require* to receive assistance under WIFIA. In order to satisfy these requirements, EPA must collect an application from prospective borrowers seeking funding. The Letters of Interest and Applications collected from prospective borrowers through this solicitation will be used by the EPA, WIFIA program staff, and reviewers to evaluate applications for credit assistance under the WIFIA eligibility requirements and selection criteria.

Form Numbers:

SWIFIA Application—6100–030
SWIFIA Letter of Interest—6100–031
WIFIA Application—6100–032
WIFIA Letter of Interest—6100–033

Respondents/affected entities: The respondents affected by this collection activity include: corporations, partnerships, joint ventures, trusts, federal, state, or local government entities, tribal governments or a consortium of tribal governments, and state infrastructure finance authorities. The Letters of Interest and Applications collected from prospective borrowers through this solicitation will be used by EPA to evaluate requests for credit assistance under the WIFIA eligibility requirements and selection criteria.

Respondent's obligation to respond: The collection is required to obtain credit assistance pursuant to section 5024 of WIFIA, *33 U.S.C. 3903*.

Estimated number of respondents: 100 per year (total).

Frequency of response: one per funding round.

Total estimated burden: 8,700 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $15,109,113.40 (per year), includes no annualized capital or operation and maintenance costs.

Dated: April 12, 2019.

Andrew D. Sawyers,

Director, Office of Wastewater Management.

[FR Doc. 2019–08158 Filed 4–22–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petitions IV–2014–13; FRL–9992–57–Region 4]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Piedmont Natural Gas—Wadesboro Compressor Station (Anson County, North Carolina)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petitions to object to state operating permits.

SUMMARY: The EPA Administrator signed an Order, dated March 20, 2019, denying the petition submitted by Pee Dee Water Air Land and Lives and the Blue Ridge Environmental Defense League (Petitioners) objecting to a proposed Clean Air Act (CAA) title V operating permit issued to Piedmont Natural Gas (PNG) for its facility located in Wadesboro, Anson County, North Carolina. The Order responds to an October 3, 2014, petition requesting that EPA object to the proposed initial permit number 10097T01. This permitting action was issued by the North Carolina Department of Environment and Natural Resources (NCDENR). The Order constitutes a final action on the petition addressed therein.

ADDRESSES: Copies of the Order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4; Air, Pesticides and Toxics Management Division; 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The Order is also available electronically at the following address: *https://www.epa.gov/title-v-operating-permits/2019-order-denying-petition-object-title-v-operating-permit-png-wadesboro*.

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permitting Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov*.

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review

and, as appropriate, the authority to object to operating permits proposed by state permitting authorities under title V of the CAA, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period. Pursuant to sections 307(b) and 505(b)(2) of the CAA, a petition for judicial review of those parts of the Order that deny issues in the petition may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notice is published in the **Federal Register**.

Petitioners submitted a petition requesting that EPA object to the proposed CAA title V operating permit no. 10097T01 issued by NCDENR to PNG. Petitioners claim that this permitting action: Failed to meet the requirements for adequate public notice; grossly underestimates emissions and, thus, fails to assure compliance with national ambient air quality standards and state implementation standards; fails to include adequate monitoring to assure compliance with applicable opacity standards; and failed to include an environmental justice analysis.

On March 20, 2019, the Administrator issued an Order denying the petition. The Order explains EPA's basis for denying the petition.

Dated: April 11, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2019–08160 Filed 4–22–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL TRADE COMMISSION

Granting of Requests for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED MARCH 1, 2019 THRU MARCH 31, 2019

03/01/2019		
20190813	G	Amazon.com, Inc.; Aurora Innovation, Inc.; Amazon.com, Inc.
20190819	G	KKR Americas Fund XII (Dream) L.P.; OneStream Software Holdings Corp.; KKR Americas Fund XII (Dream) L.P.
20190853	G	Pensare Acquisition Corp.; U.S. TelePacific Holdings Corp.; Pensare Acquisition Corp.
20190856	G	The Toro Company; The Charles Machine Works, Inc.; The Toro Company.
20190869	G	Mubadala Investment Company PJSC; John Laing Group plc; Mubadala Investment Company PJSC.
20190880	G	Olympus Growth Fund VII, L.P.; Green Equity Investors V, L.P.; Olympus Growth Fund VII, L.P.
20190883	G	USI Advantage Corp.; USRIG Holdings, LLC; USI Advantage Corp.
20190891	G	Twin River Worldwide Holdings, Inc.; Mr. Henry B. Tippie; Twin River Worldwide Holdings, Inc.
03/04/2019		
20190628	G	OCP Trust; The Kroger Co.; OCP Trust.
03/05/2019		
20190809	G	Tiger Global Private Investment Partners IX, L.P.; Starry, Inc.; Tiger Global Private Investment Partners IX, L.P.
20190871	G	Agnaten SE; Coty Inc.; Agnaten SE.
03/06/2019		
20190835	G	Stanley Black & Decker, Inc.; IES Alberta AIV, LP; Stanley Black & Decker, Inc.
20190872	G	Further Global Capital Partners, L.P.; Peer Management, LLC; Further Global Capital Partners, L.P.
20190875	G	Morgan Stanley; Solium Capital, Inc.; Morgan Stanley.
03/07/2019		
20190818	G	SoftBank Vision Fund (AIV M2) L.P.; Petuum Holdings, Ltd.; SoftBank Vision Fund (AIV M2) L.P.
20190870	G	Clearlake Capital Partners V, L.P.; The Veritas Capital Fund VI, L.P.; Clearlake Capital Partners V, L.P.
03/08/2019		
20190873	G	Ingersoll-Rand plc; Silver II GP Holdings S.C.A.; Ingersoll-Rand plc.
20190879	G	Legrand S.A.; Penguin Holdco, Inc.; Legrand S.A.
20190888	G	J.M. Huber Corporation; Dunes Point Capital Investment Partners I–A, LLC; J.M. Huber Corporation.
20190889	G	Nexus Special Situations II, L.P.; Pearson plc; Nexus Special Situations II, L.P.
20190895	G	FirstEnergy Solutions Corp.; FirstEnergy Corp.; FirstEnergy Solutions Corp.
20190896	G	The Myers Business Trust; SCP AVL LLC; The Myers Business Trust.

EARLY TERMINATIONS GRANTED MARCH 1, 2019 THRU MARCH 31, 2019—Continued

20190898	G	SoftBank Vision Fund (AIV M2) L.P.; Nuro, Inc.; SoftBank Vision Fund (AIV M2) L.P.
20190900	G	American Electric Power Company, Inc.; Sempra Energy; American Electric Power Company, Inc.
03/11/2019		
20190903	G	Auto-Owners Insurance Company; CIG Holding Company, Inc.; Auto-Owners Insurance Company.
20190904	G	Tempo Holding Company, LLC; Azim Premji; Tempo Holding Company, LLC.
20190905	G	Juniper Networks, Inc.; Mist Systems, Inc.; Juniper Networks, Inc.
20190908	G	Mario Spanicciati; BlackLine, Inc.; Mario Spanicciati.
20190909	G	GTCR (AP) Investors LP; Dolphin Investment, L.P.; GTCR (AP) Investors LP.
20190910	G	Providence Equity Partners VIII L.P.; David Bernstein; Providence Equity Partners VIII L.P.
20190918	G	Northleaf Infrastructure Capital Partners (Canada) III QPFP; Odfjell SE; Northleaf Infrastructure Capital Partners (Canada) III QPFP.
20190927	G	The Middleby Corporation; Standex International Corporation; The Middleby Corporation.
20190928	G	Apax IX USD L.P.; Centrica plc; Apax IX USD L.P.
20190929	G	Astorg VII SLP; Anaqua Parent Holdings, Inc.; Astorg VII SLP.
20190932	G	Aquiline Financial Services Fund III L.P.; Parthenon Investors III, L.P.; Aquiline Financial Services Fund III L.P.
20190933	G	Wellspring Capital Partners VI, L.P.; Wind Point Partners VIII–A, L.P.; Wellspring Capital Partners VI, L.P.
20190934	G	SoftBank Vision Fund (AIV M3) L.P.; Flexport, Inc.; SoftBank Vision Fund (AIV M3) L.P.
20190941	G	Main Post Growth Capital, L.P.; Terri L. Gick; Main Post Growth Capital, L.P.
03/13/2019		
20190926	G	Falfurrias Capital Partners III, LP; DFW Capital Partners IV, L.P.; Falfurrias Capital Partners III, LP.
20190935	G	Digital Colony Partners (Cayman), LP; Gestion Audem Inc.; Digital Colony Partners (Cayman), LP.
03/15/2019		
20190922	G	Horace Mann Educators Corporation; Bill J. and Betty Jo Ellard Secure Trust B GST Non-Exempt; Horace Mann Educators Corporation.
20190939	G	Atlas Merchant Capital Fund LP; AqGen Island Holdings, Inc.; Atlas Merchant Capital Fund LP.
20190944	G	Tokio Marine Holdings, Inc.; Richard Robin and Nurit Robin; Tokio Marine Holdings, Inc.
20190946	G	Merck & Co., Inc.; Immune Design Corp.; Merck & Co., Inc.
20190950	G	Ares Corporate Opportunities Fund V, L.P.; Audax Private Equity Fund V–A, L.P.; Ares Corporate Opportunities Fund V, L.P.
20190955	G	Rhone Partners V L.P.; Newell Brands Inc.; Rhone Partners V L.P.
20190956	G	JAB Consumer Fund SCA SICAR; Veterinary Specialist of North America Holdings LLC; JAB Consumer Fund SCA SICAR.
20190970	G	Bridgepoint Europe VI Investments (2) S.a.r.l.; Kyriba Corp.; Bridgepoint Europe VI Investments (2) S.a.r.l.
20190971	G	Madrone Partners L.P.; Uplift, Inc.; Madrone Partners L.P.
20190976	G	Sun Life Financial Inc.; GreenOak Real Estate, LP; Sun Life Financial Inc.
20190978	G	Jane Hsiao; OPKO Health, Inc.; Jane Hsiao.
03/18/2019		
20190868	G	Clinigen Group plc; Novartis AG; Clinigen Group plc.
20190940	G	New Mountain Partners V (AIV–D), L.P.; Aceto Corporation; New Mountain Partners V (AIV–D), L.P.
03/19/2019		
20190959	G	Newhouse Broadcasting Corporation; Palladian Holdings, LLC; Newhouse Broadcasting Corporation.
20190966	G	Cornell Capital Partners LP; Jiwei Robert Wang; Cornell Capital Partners LP.
03/21/2019		
20190877	G	AT&T, Inc.; Telapex, Inc.; AT&T, Inc.
20190953	G	Marshfield Clinic Health System, Inc.; Beaver Dam Community Hospitals, Inc.; Marshfield Clinic Health System, Inc.
03/22/2019		
20190964	G	Dongjun Wang; Cornell Capital Partners LP; Dongjun Wang.
20190965	G	Yi Qin; Cornell Capital Partners LP; Yi Qin.
20190967	G	Jiwei Robert Wang; Cornell Capital Partners LP; Jiwei Robert Wang.
20190975	G	Blackstone Core Equity Partners NQ L.P.; Servpro Holding Company, Inc.; Blackstone Core Equity Partners NQ L.P.
20190979	G	FR XIII Foxtrot AIV, L.P.; The Weir Group PLC; FR XIII Foxtrot AIV, L.P.
20190982	G	The Resolute Fund IV, L.P.; ARCH Holdco LLC; The Resolute Fund IV, L.P.
20190987	G	Goldman Sachs Renewable Power LLC; SunPower Corporation; Goldman Sachs Renewable Power LLC.
20190992	G	Vista Equity Partners Fund VII–A, L.P.; PlanSource Holdings, Inc.; Vista Equity Partners Fund VII–A, L.P.
20190993	G	ACI Worldwide, Inc.; The Western Union Company; ACI Worldwide, Inc.
20190994	G	Audax Private Equity Fund IV, L.P.; Accuform Manufacturing, Inc.; Audax Private Equity Fund IV, L.P.
20190996	G	The Resolute Fund IV, L.P.; KSBR Holding Corp.; The Resolute Fund IV, L.P.
20191003	G	CCMP Capital Investors III (AV–3), L.P.; BCP IV FM US LP; CCMP Capital Investors III (AV–3), L.P.
20191005	G	James Allen Pattison; Elliott Sawmilling Co., Inc.; James Allen Pattison.
20191010	G	Institutional Venture Partners XII, L.P.; Personal Capital Corporation; Institutional Venture Partners XII, L.P.

EARLY TERMINATIONS GRANTED MARCH 1, 2019 THRU MARCH 31, 2019—Continued

20191014	G	Novacap Industries IV, L.P.; GHP Group, Inc.; Novacap Industries IV, L.P.
		03/25/2019
20191004	G	Blackbird HoldCo, Inc.; Irving Place Capital Partners III SPV, L.P.; Blackbird HoldCo, Inc.
20191008	G	AP Drive, L.P.; EQT Infrastructure II Limited Partnership; AP Drive, L.P.
		03/26/2019
20191019	G	Concrete Pumping Holdings, Inc.; A. Keith Crawford and Melinda Crawford; Concrete Pumping Holdings, Inc.
		03/29/2019
20190912	G	George J. Pedersen; Kforce Inc.; George J. Pedersen.

FOR FURTHER INFORMATION CONTACT: Theresa Kingsberry, Program Support Specialist, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room CC–5301, Washington, DC 20024, (202) 326–3100.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–08081 Filed 4–22–19; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Granting of Requests for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED FEBRUARY 1, 2019 THRU FEBRUARY 28, 2019

		02/04/2019
20190275	G	The E.W. Scripps Company; EPI Group, LLC; The E.W. Scripps Company.
20190667	G	RLC Industries Co.; Potlatch Deltic Corporation; RLC Industries Co.
20190694	G	Christopher Grassi; Josue Christiano Gomes da Silva; Christopher Grassi.
20190707	G	Atlantic Regional Federal Credit Union; York County Federal Credit Union; Atlantic Regional Federal Credit Union.
20190712	G	Royal Dutch Shell plc; Landmark Industries; Royal Dutch Shell plc.
20190713	G	Landmark Industries Holdings, Ltd.; Landmark Industries; Landmark Industries Holdings, Ltd.
20190714	G	3i Group plc; Elliott Springer; 3i Group plc.
20190715	G	3i Group plc; Kevin Schneider; 3i Group plc.
20190721	G	ACI Group Holdings, Inc.; Sharpe Dry Goods Company, LLC; ACI Group Holdings, Inc.
20190730	G	John Paulson; Centerbridge Capital Partners II, L.P.; John Paulson.
20190737	G	SoftBank Vision Fund (AIV M1) L.P.; Automation Anywhere, Inc.; SoftBank Vision Fund (AIV M1) L.P.
20190741	G	KeyCorp; Gary Lieberman; KeyCorp.
20190760	G	Nordic Capital IX Beta, L.P.; Tulip Holding Limited; Nordic Capital IX Beta, L.P.
		02/06/2019
20190673	G	J.B. Hunt Transport Services, Inc.; Patrick Cory; J.B. Hunt Transport Services, Inc.
		02/07/2019
20190720	G	Henry Schein, Inc.; BW NAR AIV III, L.P.; Henry Schein, Inc.
		02/08/2019
20190488	G	Ari Ojalvo-Oner; 2288880 Ontario Limited; Ari Ojalvo-Oner.
20190561	G	CONMED Corporation; Filtration Group Equity LLC; CONMED Corporation.
20190751	G	The Baring Asia Private Equity Fund VI, L.P. 2; Pioneer Corporation; The Baring Asia Private Equity Fund VI, L.P. 2.
		02/11/2019
20190750	G	Reingold Geiger; Nemo Investor Aggregator, Ltd.; Reingold Geiger.
20190761	G	Zebra Technologies Corporation; Water Street Healthcare Partners III, L.P.; Zebra Technologies Corporation.
20190762	G	Michael Klein; Clarivate Analytics Plc; Michael Klein.

EARLY TERMINATIONS GRANTED FEBRUARY 1, 2019 THRU FEBRUARY 28, 2019—Continued

20190765	G	ShawCor Ltd.; ZCL Composites Inc.; ShawCor Ltd.
20190768	G	AE Industrial Partners Fund II, LP; OEP VI AIV Feeder (A), L.P.; AE Industrial Partners Fund II, LP.
20190770	G	NGL Energy Partners LP; DCP Midstream Partners, LP; NGL Energy Partners LP.
20190779	G	Starwood Energy Infrastructure Fund III U.S. Investor, L.P.; FirstEnergy Solutions Corp.; Starwood Energy Infrastructure Fund III U.S. Investor, L.P.
20190780	G	Steel Dynamics, Inc.; United Steel Supply, LLC; Steel Dynamics, Inc.
20190787	G	GTCR Fund XI/B LP; GTCR Fund XI/A LP; GTCR Fund XI/B LP.
20190789	G	AIPCF VI Indirect Investor AIV LP; General Electric Company; AIPCF VI Indirect Investor AIV LP.
20190794	G	Kirby Corporation; Arlen B. Cenac, Jr.; Kirby Corporation.
		02/13/2019
20190742	G	Elliott International Limited; Ebay Inc.; Elliott International Limited.
20190743	G	Elliott Associates, L.P.; Ebay Inc.; Elliott Associates, L.P.
		02/14/2019
20190738	G	Huntington Ingalls Industries, Inc.; Fulcrum IT Holdings, LLC; Huntington Ingalls Industries, Inc.
20190793	G	Tesla, Inc.; Maxwell Technologies , Inc.; Tesla, Inc.
		02/15/2019
20190798	G	Thoma Bravo Fund XII Global, L.P.; Rubicon Technology Partners (Cayman) L.P.; Thoma Bravo Fund XII Global, L.P.
20190800	G	FIC DBR Co-Invest Feeder, L.P.; Denham Oil & Gas Fund LP; FIC DBR Co-Invest Feeder, L.P.
20190801	G	AIF IX International Holdings, L.P. (Cayman); RPC Group Plc; AIF IX International Holdings, L.P. (Cayman).
20190803	G	Tyler Technologies, Inc.; Arlington Capital Partners II, LP; Tyler Technologies, Inc.
20190804	G	John Zimmer; Lyft, Inc.; John Zimmer.
20190805	G	Logan Green; Lyft, Inc.; Logan Green.
20190817	G	Chevron Corporation; Petroleo Brasileiro S.A.; Chevron Corporation.
20190826	G	Mr. Renrong Yu; Beijing OmniVision Technologies, Co. Ltd.; Mr. Renrong Yu.
		02/19/2019
20190764	G	Canaccord Genuity Group Inc.; Columbia Care LLC; Canaccord Genuity Group Inc.
		02/20/2019
20171983	G	Fresenius Medical Care AG & Co. KGaA; NxStage Medical, Inc.; Fresenius Medical Care AG & Co. KGaA.
		02/21/2019
20190748	G	Novartis AG; Ionis Pharmaceuticals, Inc.; Novartis AG.
		02/22/2019
20190775	G	Uniti Group Inc.; R. Otto Maly; Uniti Group Inc.
20190796	G	Aurobindo Pharma Limited; Spectrum Pharamaceuticals, Inc.; Aurobindo Pharma Limited.
20190799	G	Sumner Redstone; Pluto Inc.; Sumner Redstone.
		02/25/2019
20190797	G	Starboard Value and Opportunity Fund Ltd.; Bristol-Myers Squibb Company; Starboard Value and Opportunity Fund Ltd.
20190824	G	iAero Group Holdco LLC; New Swift Air Holdings, L.L.C.; iAero Group Holdco LLC.
20190827	G	Johnson & Johnson; MeiraGTx Holdings plc; Johnson & Johnson.
		02/26/2019
20190816	G	Sequoia Capital Global Growth Fund III—Endurance Partners; Aurora Innovation, Inc.; Sequoia Capital Global Growth Fund III—Endurance Partners.
20190823	G	Unite Parent Corp.; The Ultimate Software Group, Inc.; Unite Parent Corp.
20190837	G	KKR Asian Fund II Japan AIV L.P.; Thermo Fisher Scientific Inc.; KKR Asian Fund II Japan AIV L.P.
20190840	G	Wellspring Capital Partners VI, L.P.; BDCM Opportunity Fund II, L.P.; Wellspring Capital Partners VI, L.P.
20190842	G	SoftBank Vision Fund (AIV M2) L.P.; Fair Financial Corp.; SoftBank Vision Fund (AIV M2) L.P.
20190844	G	FLIR Systems, Inc.; Arlington Capital Partners III, L.P.; FLIR Systems, Inc.
20190850	G	Bain Capital Fund XII, L.P.; Rangers Renal Holdings LP; Bain Capital Fund XII, L.P.
20190851	G	Carousel Capital Partners V, L.P.; Sterling Group Partners III, L.P.; Carousel Capital Partners V, L.P.
20190852	G	LightBay Investment Partners LP; Levine Leichtman Capital Partners V, L.P.; LightBay Investment Partners LP.
20190857	G	One Rock Capital Partners II LP; Univar Inc.; One Rock Capital Partners II LP.
20190858	G	SPC Investment Co., L.P.; Patricia Bragg; SPC Investment Co., L.P.
20190859	G	PDS Parent, Inc.; Peachtree Parent, Inc.; PDS Parent, Inc.
20190862	G	RoundTable Healthcare Partners IV, L.P.; Moberg Pharma AB (publ); RoundTable Healthcare Partners IV, L.P.
20190865	G	Carlyle U.S. Equity Opportunity Fund II, L.P.; Cortec Group Fund V, L.P.; Carlyle U.S. Equity Opportunity Fund II, L.P.
20190867	G	Gryphon Partners V, L.P.; LLR Equity Partners IV, L.P.; Gryphon Partners V, L.P.

EARLY TERMINATIONS GRANTED FEBRUARY 1, 2019 THRU FEBRUARY 28, 2019—Continued

02/28/2019

20190825	G	Sentinel Capital Partners VI, L.P.; Benjamin Rutledge Wall II; Sentinel Capital Partners VI, L.P.
20190838	G	SoftBank Vision Fund (AIV M1) L.P.; Guardant Health, Inc.; SoftBank Vision Fund (AIV M1) L.P.
20190854	G	Carbonite, Inc.; TCV V, L.P.; Carbonite, Inc.

FOR FURTHER INFORMATION CONTACT: Theresa Kingsberry, Program Support Specialist, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room CC–5301, Washington, DC 20024, (202) 326–3100.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–08080 Filed 4–22–19; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[30-Day–19–19GW]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Agency for Toxic Substances and Disease Registry (ATSDR) has submitted the information collection request titled ''Exposure Characterization and Measurements during Activities Conducted on Synthetic Turf Fields with Tire Crumb Rubber Infill'' to the Office of Management and Budget (OMB) for review and approval. ATSDR previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on December 26, 2018 to obtain comments from the public and affected agencies. ATSDR received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

ATSDR will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Exposure Characterization and Measurements during Activities Conducted on Synthetic Turf Fields with Tire Crumb Rubber Infill—New—Agency for Toxic Substances and Disease Registry (ATSDR).

Background and Brief Description

Currently in the United States, there are more than 12,000 synthetic turf fields in use. While the Synthetic Turf Council has set guidelines for the content of crumb rubber used as infill in synthetic turf fields, manufacturing processes result in differences among types of crumb rubber. Additionally, the chemical composition may vary highly between different processes and source materials and may vary even within granules from the same origin.

From 2016–2018, the Agency for Toxic Substances and Disease Registry and the United States Environmental Protection Agency (ATSDR/US EPA) conducted pilot-scale research under the protocol titled ''Collections Related to Synthetic Turf Fields with Crumb Rubber Infill,'' and under two information collection requests (ICRs). Activity 1, under OMB Control No. 0923–0054 (expiration date 01/31/2017), aimed to collect tire crumb rubber samples from 40 synthetic turf fields across the U.S. and from nine manufacturing facilities. Under OMB Control No. 0923–0058 (expiration date 08/13/2018), ATSDR/US EPA aimed to evaluate and characterize the human exposure potential to constituents in crumb rubber infill among a convenience sample of 60 field users (Activity 2) and to collect biological specimens (blood and urine) from 45 participants (Activity 3). Preliminary results from the pilot-scale study indicate the need for further investigation for a select group of chemicals to which field users may potentially be exposed.

ATSDR is requesting a new two-year PRA clearance to conduct a supplemental data collection, titled ''Exposure Characterization and Measurements during Activities Conducted on Synthetic Turf Fields with Tire Crumb Rubber Infill''. The supplemental study will be a larger-scale assessment of exposure potential for individuals who use or play on synthetic turf fields with tire crumb rubber infill. The new ICR will address key limitations of the pilot-scale study, specifically, the small sample size, the lack of a comparison population, and an extremely short data collection period needed to meet early reporting requirements.

As before, the supplemental study will include field users who are persons who use synthetic turf fields with crumb rubber infill and who routinely perform activities that would result in a high level of contact to crumb rubber. The study will also include persons who play on natural grass fields to provide a comparison group.

The field users will be administered a detailed questionnaire about activity patterns on synthetic turf with crumb rubber infill; the questionnaire is largely the same as the one approved under OMB Control No. 0923–0058 with minor modifications. This instrument will be used to characterize exposure scenarios, including the nature and duration of potential exposures. Additionally, the questionnaire will include queries on potential external sources, such as dietary sources, to select chemicals.

ATSDR will collect urine samples pre- and post-activity. The urine samples will be analyzed for polyaromatic hydrocarbons and will also be archived in case of future development of new analytical methods for potential chemicals of interest.

The research study will screen a total of 220 participants for eligibility. The target sample size is 150 for synthetic turf field users and is 50 for the natural grass field users. The total burden hours for the research study is 184 hours among all of the 220 respondents. There is no cost to the respondents other than their time in the study.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Adult/Adolescent Field Users	Eligibility Screening Form	110	1	5/60
	Adult and Adolescent Questionnaire	100	1	30/60
	Exposure Measurement Form	100	1	20/60
Parents/Guardians of Youth/Child Field Users	Eligibility Screening Form	110	1	5/60
	Youth and Child Questionnaire	100	1	30/60
Youth/Child Field Users	Exposure Measurement Form	100	1	20/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–08147 Filed 4–22–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substance and Disease Registry

[60-Day–19–19ACF; Docket No. ATSDR–2019–0004]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Human health effects of drinking water exposures to per- and polyfluoroalkyl substances (PFAS): A multi-site cross-sectional study (The Multi-site Study).'' The purpose of this research is to use sound study methods to see if drinking water exposure to PFAS is related to health outcomes.

DATES: ATSDR must receive written comments on or before June 24, 2019.

ADDRESSES: You may submit comments, identified by Docket No. ATSDR–2019–0004 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. ATSDR will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffery M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Human health effects of drinking water exposures to per- and polyfluoroalkyl substances (PFAS): A multi-site cross-sectional study (The Multi-site Study)—NEW—Agency for Toxic Substances and Disease Registry (ATSDR).

Background and Brief Description

Per- and polyfluoroalkyl substances (PFAS) are a family of chemicals used in industrial applications and consumer products. PFAS contamination of drinking water is widespread in the U.S. Some estimates indicate that at least

sixty million residents were served by 66 public water supplies that had at least one sample at or above the US Environmental Protection Agency (EPA) Lifetime Health Advisory for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) (individually or combined), which is 70 nanograms per liter (ng/L) of water. Industrial facilities that manufacture or use PFAS have contaminated drinking water in surrounding communities in several states. In addition, PFOS, PFOA, perfluorohexane sulfonic acid (PFHxS) and other PFAS chemicals are constituents in aqueous film-forming foam (AFFF), used to extinguish flammable liquid fires. The use of AFFF at military bases and other sites may have resulted in the migration of PFAS chemicals through soils to ground water and/or surface water sources of drinking water for the bases and/or surrounding communities around the country.

In response to growing awareness of the extent of PFAS contamination across the U.S., the Section 316(a) of the 2018 National Defense Authorization Act (Pub. L. 115–91) authorized the Agency for Toxic Substances and Disease Registry (ATSDR) to conduct a study on the human health effects of PFAS contamination in drinking water. The existence of widespread contamination at many sites around the U.S. makes this a paramount effort in addressing the health effects of exposures to PFAS from contaminated drinking water. Consequently, ATSDR is requesting a three-year Paperwork Reduction Act (PRA) clearance for the Multi-site Study. The Multi-site Study will build on the preceding proof-of-concept study at the Pease International Tradeport in Portsmouth, New Hampshire.

ATSDR will conduct this research using a cooperative agreement titled ''Multi-site Study of the Health Implications of Exposure to PFAS-Contaminated Drinking Water'' (Notice of Funding Opportunity [NOFO] No. CDC–RFA–TS–19–002). The expected number of research recipients (*e.g.,* entities selected for funding) is six. The program will be administered by the CDC Extramural Research Program Office (ERPO) at the National Center for Injury Prevention and Control (NCIPC). The research under this cooperative agreement will be a two-part program. First, a mandatory core research protocol for all recipients is designed to aggregate data across all sites and designed to compare data between sites. Next, each recipient will have the option to propose additional investigator-initiated research questions and hypotheses related to the overall goals of this NOFO.

The main goal of this cross-sectional multi-site study is to evaluate associations between measured and reconstructed historic serum levels of PFAS including PFOA, PFOS, and PFHxS, and selected health outcomes. The health outcomes of interest include lipids, renal function and kidney disease, thyroid hormones and disease, liver function and disease, glycemic parameters and diabetes, as well as immune response and function in both children and adults. In addition, the study will investigate PFAS differences in sex hormones and sexual maturation, vaccine response, and neurobehavioral outcomes in children. In adults, additional outcomes of interest include cardiovascular disease, osteoarthritis and osteoporosis, endometriosis, and autoimmune disease.

Under the cooperative agreement, each recipient shall propose candidate study sites at communities whose drinking water was impacted by AFFF use or by industrial PFAS emissions. Site selection will consider the documented levels of PFAS drinking water concentrations. The aim will be to include sites so that a wide range in PFAS exposures levels are included in the study. This will enable the evaluation of exposure-response trends including effects at the lower range of exposures. Ground water contaminant fate and transport models and water system distribution system models may be necessary to identify the areas with contaminated drinking water, to determine the period when the drinking water was contaminated, and to reconstruct historical PFAS contaminant concentrations.

For exposure estimation, participants will be categorized based on their measured serum concentration of PFAS compounds or on modeled estimated historical serum levels (*e.g.,* referent or low, medium, high). Measured and estimated PFAS serum levels will also be evaluated as continuous variables. At sites with prior PFAS biomonitoring data, the study will evaluate changes in PFAS concentration over time.

Each recipient shall reconstruct historic serum PFAS concentrations. This may be done by estimating half-lives and elimination rates as well as by water contamination modeling to inform pharmacokinetic (PK) or physiologically based pharmacokinetic (PBPK) models. Historical serum PFAS reconstruction will enable the evaluation of exposure lags and vulnerable periods as well as statistical analyses that can control for confounding and reverse causation due to physiological factors.

Each recipient shall identify and enumerate all households served by the contaminated drinking water supply in the selected community to recruit potential participants and to meet the sample size requirements for children and adults. If the selected community is served by a PFAS-contaminated public water system, then the recipient will obtain a list of households served by the water purveyor from its billing records. If the community is served by contaminated private wells, then the recipient will obtain a list of households with contaminated wells from the local and/or state health and environmental agencies.

Statistical sampling methods (*e.g.,* a two-stage cluster sample) may be used for recruitment of study participants if all the affected households can be enumerated. If the PFAS drinking water concentrations vary widely across the community, then the recipient should consider using targeted sampling approaches—including oversampling of areas with higher PFAS concentrations—to ensure a sufficiently wide distribution of exposure levels among study participants to evaluate exposure-response trends. If enumeration of all households is not feasible, or if participation rates are expected to be low, then the recipient can consider non-probabilistic sampling approaches such as ''judgment'' and ''snowball'' sampling approaches.

The recipients should consider requesting assistance from local and state health departments in its recruitment efforts. In addition, the recipient should engage community organizations to assist in conducting outreach about the study and recruitment of participants and consider establishing a community assistance panel (CAP). The CAP could provide comments on any additional investigator-initiated research questions and hypotheses and facilitate the involvement of the affected community in decisions related to outreach about the study, participant recruitment strategies, and study logistics. The CAP could also assist the recipient in the dissemination of study findings to the community.

In total, ATSDR seeks to enroll at least 8,000 participants (6,000 adults and 2,000 children and their parents) from communities exposed to PFAS-contaminated drinking water over the first three years of the five-year cooperative agreement program. Annualized estimates are 2,667 participants (2,000 adults and 667 children). To restrict this study to drinking water exposures, adults occupationally exposed to PFAS will not be eligible for the study (*e.g.,* ever firefighters or ever workers in an

industry using PFAS chemicals in its manufacturing process). Likewise, children whose birth mothers were occupationally exposed will not be eligible. ATSDR assumes that 5 percent of the people who volunteer will not meet eligibility requirements; therefore, a total of 8,400 people will be screened. To complete the data collection in three years, annualized estimates for eligibility screening are 2,800 people (2,100 adults and 700 children) and an annual time burden of 467 hours. The recipients will provide appointment reminder calls for each eligible person who agrees to be enrolled (n = 2,667 per year) for a time burden of 222 hours per year.

At enrollment, each recipient will obtain adult consent, parental permission, and child assent before data collection begins. For each participant, the recipient will take body measures, collect blood samples to measure PFAS serum levels and several effect biomarkers such as lipids, and thyroid, kidney, immune and liver function. The recipient will also obtain urine samples from participants to measure PFAS levels and kidney function biomarkers. The study will archive leftover serum and urine samples for additional analyses of PFAS chemicals and specific effect biomarkers. The National Center for Environmental Health (NCEH) laboratory will perform blood and urine PFAS analyses for all Multi-site Study participants. Thus, issues of inter-laboratory variability for exposure measures will be eliminated.

Adult participants and a parent of child participants will complete a questionnaire that includes residential history, medical history, occupational history, and water consumption habits (n=2,000 adults and 667 children per year). Ideally, the parent will be the child's birth mother, as ATSDR will ask details about the child's exposure, pregnancy, and breastfeeding history.

For purposes of time burden estimation, ATSDR assumes that 20 percent of parents will also enroll as adults and can take the child short form questionnaire (n=133 per year); therefore, 534 parents will take the child long form questionnaire per year. Parents and children, with administration by trained professionals, will also complete neurobehavioral assessments of the child's attention and behaviors (n=667 per year).

To facilitate access to medical and school records, each recipient will reach out to local medical societies, public school systems, and private schools, to enlist their cooperation with the study. The recipient will ask for permission to abstract participants' medical records to confirm self-reported health outcomes. The recipient will also seek permission to abstract and compare children's school records to their behavioral assessment results. Based on ATSDR's experience from the Pease proof of concept study, ATSDR estimates that it will take 48 education specialists and 150 adult and 50 pediatric medical record specialists to complete record abstractions across all study sites. Given the goal to enroll at least 2,000 adults and 667 children per year, the annual time burden for medical and educational record abstraction is estimated to be 1,091 hours.

The total annualized time burden requested is 5,269 hours. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Multi-site Study Participants	Eligibility Screening Script	2,800	1	10/60	467
	Appointment Reminder Telephone Script	2,667	1	5/60	222
	Update Contact Information Hardcopy Form	2,667	1	5/60	222
	Medication List	2,667	1	3/60	133
	Body and Blood Pressure Measures Form	2,667	1	5/60	222
	Blood Draw and Urine Collection Form	2,667	1	10/60	444
	Adult Questionnaire	2,000	1	30/60	1,000
	Child Questionnaire—Long Form	537	1	30/60	268
	Child Questionnaire—Short Form	133	1	15/60	33
	Parent Neurobehavioral Test Battery	667	1	15/60	167
	Child Neurobehavioral Test Battery	667	1	90/60	1,000
Education Specialists	Child School Record Abstraction Form	48	14	20/60	224
Medical Record Specialists	Medical Record Abstraction Form—Adult	150	13	20/60	650
	Medical Record Abstraction Form—Child	50	13	20/60	217
Total					5,269

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–08150 Filed 4–22–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–19–0457; Docket No. CDC–2019–0032]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on Aggregate Reports for Tuberculosis Program Evaluation. The goal of the study is to allow CDC to collect and monitor indicators for key program activities, such as finding tuberculosis infections in recent contacts of cases

and in other high-risk persons likely to be infected and providing therapy for latent tuberculosis infection in an effort to eliminate Tuberculosis in the United States. CDC is requesting approval for 268 burden hours. This is an increase of 42 hour from the previously approved 226 hours.

DATES: CDC must receive written comments on or before June 24, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0032 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Ph.D., Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Aggregate Reports for Tuberculosis Program Evaluation (OMB No. 0920–0457, Expiration date 2/29/2020)—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC requests approval of this revision of the Aggregate Reports for Tuberculosis Program Evaluation, previously approved under OMB No. 0920–0457, for three years. There are minor revisions to the report forms, data definitions, and reporting instructions.

CDC is requesting approval for 268 burden hours. This is an increase of 42 hours from the previously approved 226 hours. The minor revisions that contributed to an increase in data collection burden address the change in the national strategies for TB control and prevention, emphasizing treatment of individuals with latent TB infection (LTBI), and at high risk of progression to TB disease. The revisions, which are optional data collection elements, will help programs assess high-risk populations served, and evaluate the adaptation and effectiveness of new diagnostic tests and drug regimens in treating LTBI.

To ensure the elimination of tuberculosis in the United States, CDC monitors indicators for key program activities, such as finding tuberculosis infections in recent contacts of cases and in other persons likely to be infected and providing therapy for latent tuberculosis infection. In 2000, CDC implemented two program evaluation reports for annual submission: Aggregate report of follow-up and treatment for contacts of tuberculosis cases, and Aggregate report of targeted testing and treatment for latent tuberculosis infection (OMB No. 0920–0457). The respondents for these reports are the 67 state and local tuberculosis control programs receiving federal cooperative agreement funding through the CDC Division of Tuberculosis Elimination (DTBE). These reports emphasize treatment outcomes, high-priority target populations vulnerable to tuberculosis, and electronic report entry and submission to CDC through the National Tuberculosis Indicators Project (NTIP), a secure web-based system for program evaluation data. No other federal agency collects this type of national tuberculosis data, and the aggregate report of follow-up and treatment for contacts of tuberculosis cases, and aggregate report of targeted testing and treatment for latent tuberculosis infection are the only data source about latent tuberculosis infection for monitoring national progress toward tuberculosis elimination with these activities. CDC provides ongoing assistance in the preparation and utilization of these reports at the local and state levels of public health jurisdiction. CDC also provides respondents with technical support for the NTIP software. The estimated annualized burden hours are 268. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Data clerks and Program Managers (electronic).	Follow-up and Treatment of Contacts to Tuberculosis Cases Form (3a).	67	1	2	134

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Data clerks and Program Managers (electronic).	Targeted Testing and Treatment for Latent Tuberculosis Infection (3b).	67	1	2	134
Total					268

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–08151 Filed 4–22–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–19–1170]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Canine Leptospirosis Surveillance in Puerto Rico to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on January 29, 2019 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Canine Leptospirosis Surveillance in Puerto Rico (OMB Control No. 0920–1170, Exp. Date 03/31/2019)—Reinstatement with Change—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Division of High-Consequence Pathogens and Pathology (DHCPP), Bacterial Special Pathogens Branch (BSPB), requests three years of OMB approval for a reinstatement to the approved ICR ''Canine Leptospirosis Surveillance in Puerto Rico.'' Approved methods of information collection will not change.

Active surveillance allows for the collection of prospective data on acute cases to determine the incidence and distribution of leptospirosis in dogs, assess risk factors for infection, characterize circulating Leptospira serovars and species, assess applicability of vaccines currently in use based on serovar determination, and assess rodent, livestock, and wildlife reservoirs of leptospirosis based on infecting serovars found in dogs. Findings from this study will aid in the development of evidence-based, targeted interventions for the prevention of canine leptospirosis, be used to focus human leptospirosis surveillance efforts, and guide future investigations on leptospirosis in humans and animals in Puerto Rico.

The information collection for which approval is sought is in accordance with BSPB's mission to prevent illness, disability, or death caused by bacterial zoonotic diseases through surveillance, epidemic investigations, epidemiologic and laboratory research, training and public education. Authorizing Legislation comes from Section 301 of the Public Health Service Act (42 U.S.C. 241). Successful execution of BSPB's public health mission requires data collection activities in collaboration with the state health department in Puerto Rico and with local veterinary clinics and animal shelters participating in the study.

These activities include collecting information about dogs that meet the study case definition for a suspect case of leptospirosis seen at participating veterinary clinics and shelters. Participating veterinarians and their veterinary staff collect information by interviewing the dog owner (shelters are an exception as dog will not have an owner) and reviewing medical and administrative records, as necessary. Basic information about the participating sites will also be collected for study management and to enhance data analysis.

Information will be collected using paper forms and provided in Spanish. Staff at participating sites find it easier to complete a paper copy when abstracting medical record information and interviewing owners for information about their dog's risk factors and symptoms. Study coordinators will enter collected data into an electronic database.

The types of information being collected include information about the dog's signalment, location of residence, environmental risk factors, vaccination history, clinical signs and symptoms,

laboratory results, and clinical outcome. Approval of this reinstatement ICR will allow BSPB to continue to collect these information which can help inform animal public health and will help contribute to a One Health understanding of leptospirosis in Puerto Rico.

BSPB estimates involvement of at least 411 respondents (385 from the general public and 26 veterinarians and their veterinary staff) and estimates a total of 168 hours of burden for research activities each year. The collected information will not impose a cost burden on the respondents beyond that associated with their time to provide the required data.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Veterinarian	Enrollment Questionnaire	26	1	5/60
	Log Sheet	26	24	1/60
	Case Questionnaire	26	24	10/60
General public	Case Questionnaire	624	1	5/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–08145 Filed 4–22–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–19–19BX]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Understanding How Discounting Affects Decision Making and Adoption of Prevention Through Design Solutions to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on December 10, 2018 to obtain comments from the public and affected agencies. CDC received no comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Understanding How Discounting Affects Decision Making and Adoption of Prevention Through Design Solutions—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

As mandated in the Occupational Safety and Health Act of 1970 (Pub. L. 91–596), the mission of NIOSH is to conduct research and investigations on occupational safety and health. This project will focus on understanding the decision-making processes of small wholesale and small retail businesses in regards to the adoption of fall-prevention solutions. Slips, trips, and falls are major sources of workplace injury across all industry sectors and represent a significant burden. In the wholesale and retail trade sectors, slips, trips, and falls account for 25% of all reported injuries. By definition, small businesses employ fewer numbers of people, therefore a slip, trip, or fall resulting in an injury is less likely to occur in any given establishment. Small business employers may underestimate the risks associated with occupational slips, trips, and falls because they have not experienced them and therefore do not take the necessary steps to prevent them.

One of the best ways to prevent and control occupational injuries, illnesses, and fatalities is to ''design out'' or minimize hazards and risks. NIOSH's Prevention Through Design Initiative focuses on this concept through the inclusion of prevention considerations in all designs that impact workers. Although employers' decisions can lead to the successful implementation of Prevention Through Design, fall-prevention solutions are not well understood. More information is needed to better understand the motivational, social, and organizational factors that affect employers' decisions to adopt fall-prevention solutions. This project will combine traditional surveys with behavioral economic methodologies to understand the decision-making processes related to the adoption of fall-prevention solutions. By using behavioral economic principles and methods, this study will pose hypothetical, but realistic, scenarios to small business employers to assess the influence of several factors on the patterns of decisions. One of the goals of the study is to assess the subjective value of fall-prevention solutions based on their costs and effort required to use them. To quantify the subjective value

of fall-prevention solutions, this project will use the behavioral economic principles to assess the trade-offs small business owners make among the cost of fall prevention solutions, the amount of effort require to assemble them, and the amount of time they take to assemble. One of the behavioral economic principles is discounting, in which the value of a product or outcome decreases as the cost, effort, or delay associated with it increases. For example, small-business owners may ''discount'' the value of a fall-prevention solution if it requires great effort to assemble.

The survey will include instruments to obtain demographic information (age, gender, income, etc.), organizational safety information (*e.g.,* ''Has someone at your place of work ever been injured?''), and behavioral economic discounting assessments. For the behavioral economic questions in the survey, participants will be asked to make choices about hypothetical, but realistic, scenarios that assess the influence of several factors on the patterns of decision-making. To date, no study has quantitatively assessed the safety-related decision-making processes of small business employers from a behavioral economic perspective. Previous studies in this area consist of qualitative studies of some factors that affect occupational safety and health of small businesses. This study will address a knowledge gap in the professional and scientific literature by contributing quantitative data to a problem that has been overlooked. The results for this study are meant for theory development and are not intended to be nationally representative.

The sample size for this survey will be 100 small business employers in the wholesale or retail trade sectors. This sample size is based on a power analysis which indicated that 100 respondents would be sufficient to detect any correlations between the organizational or demographic variables and the behavioral economic measures of decision making. Each web-based survey will take approximately 30 minutes to complete, resulting in an annualized burden estimate of 50 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Instrument	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Small business employers	Discounting Survey	100	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–08146 Filed 4–22–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–19–1083 Docket No. CDC–2019–0030]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Extended Evaluation of the National Tobacco Prevention and Control Public Education Campaign.'' This information collection request will enable the Centers for Disease Control and Prevention (CDC) to continue to measure exposure and awareness of the *Tips From Former Smokers*® campaign (*Tips*®) and to evaluate its impact on campaign-targeted outcomes among smokers and nonsmokers in the United States.

DATES: CDC must receive written comments on or before June 24, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0030 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Extended Evaluation of the National Tobacco Prevention and Control Public Education Campaign—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2012, HHS/CDC launched the National Tobacco Prevention and Control Public Education Campaign (*Tips*). The primary objectives of *Tips* are to encourage smokers to quit smoking and to encourage nonsmokers to communicate with smokers about the dangers of smoking. *Tips* airs annually in all U.S. media markets on broadcast and national cable TV as well as other media channels including digital video, online display and banners, radio, billboards, and other formats. *Tips* ads rely on evidence-based paid media advertising that highlights the negative health consequences of smoking. *Tips'* primary target audience is adult smokers; adult nonsmokers constitute the secondary audience. *Tips* paid advertisements are aimed at providing motivation and support to smokers to quit, with information and other resources to increase smokers' chances of success in their attempts to quit smoking. A key objective for the nonsmoker audience is to encourage nonsmokers to communicate with smokers they may know (including family and friends) about the dangers of smoking and to encourage them to quit. *Tips* ads also focus on increasing audience's knowledge of smoking-related diseases, intentions to quit, and other related outcomes.

The goal of the proposed information collection is to evaluate the reach of *Tips* among intended audiences and to examine the effectiveness of these efforts in impacting specific outcomes that are targeted by *Tips,* including quit attempts and intentions to quit among smokers, nonsmokers' communications about the dangers of smoking, and knowledge of smoking-related diseases among both audiences. This will require customized surveys that will capture all unique messages and components of *Tips*. Information will be collected through Web surveys to be self-administered by adults 18 and over on computers in the respondent's home or in another convenient location. Evaluating *Tips'* impact on behavioral outcomes is necessary to determine campaign cost effectiveness and to allow program planning for the most effective campaign outcomes. Because *Tips* content changes, it is necessary to evaluate each yearly implementation of *Tips*.

The proposed information collection will include three survey collections per year (nine surveys in total) generally conducted before, during, and after *Tips* in each year. Using the same methods outlined in the currently-approved information collection (OMB No. 0920–1083, exp., 2/29/2020), participants will be recruited from two sources: (1) An online longitudinal cohort of adult smokers and nonsmokers, sampled randomly from postal mailing addresses in the United States (address-based sample, or ABS); and (2) the existing GfK/Ipsos (formerly GfK) KnowledgePanel, an established long-term online panel of U.S. adults. All online surveys, regardless of sample source, will be conducted via the GfK/Ipsos KnowledgePanel Web portal for self-administered surveys.

Information will be collected through Web surveys to be self-administered on computers in the respondent's home or in another convenient location. Information will be collected about smokers' and nonsmokers' awareness of and exposure to specific *Tips* advertisements; knowledge, attitudes, beliefs related to smoking and secondhand smoke; and other marketing exposure. The surveys will also measure behaviors related to smoking cessation (among the smokers in the sample) and behaviors related to nonsmokers' encouragement of smokers to quit smoking, recommendations of cessation services, and attitudes about other tobacco and nicotine products.

It is important to evaluate *Tips* in a context that assesses the dynamic nature of tobacco product marketing and uptake of various tobacco products, particularly since these may affect successful cessation rates. Survey instruments may be updated to include new or revised items on relevant topics, including cigars, noncombustible tobacco products, and other emerging trends in tobacco use.

Participation is voluntary and there are no costs to respondents other than their time. The total response burden is estimated at 27,933 hours over three years between early fall 2020 and December 2023. The total annualized burden hours during this period thus are estimated at 9,311.

ESTIMATED ANNUALIZED BURDEN HOURS

(Type of) Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
General Population	Screening & Consent (English)	16,167	1	5/60	1,347
	Screening & Consent (Spanish)	500	1	5/60	42
Adult Smokers, ages 18–54, in the United States.	Smoker Survey Wave A (English)	2,587	1	20/60	862
	Smoker Survey Wave A (Spanish)	80	1	20/60	27
	Smoker Survey Wave B (English)	1,617	1	20/60	539
	Smoker Survey Wave B (Spanish)	50	1	20/60	17
	Smoker Survey Wave C (English)	1,617	1	20/60	539
	Smoker Survey Wave C (Spanish)	50	1	20/60	17
	Smoker Survey Wave D (English)	1,617	1	20/60	539
	Smoker Survey Wave D (Spanish)	50	1	20/60	17
	Smoker Survey Wave E (English)	1,617	1	20/60	539
	Smoker Survey Wave E (Spanish)	50	1	20/60	17
	Smoker Survey Wave F (English)	1,617	1	20/60	539
	Smoker Survey Wave F (Spanish)	50	1	20/60	17

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

(Type of) Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
	Smoker Survey Wave G (English) ...	1,617	1	20/60	539
	Smoker Survey Wave G (Spanish) ..	50	1	20/60	17
	Smoker Survey Wave H (English) ...	1,617	1	20/60	539
	Smoker Survey Wave H (Spanish) ..	50	1	20/60	17
	Smoker Survey Wave I (English)	1,617	1	20/60	539
	Smoker Survey Wave I (Spanish) ...	50	1	20/60	17
Adult Nonsmokers, ages 18–54, in the United States.	Nonsmoker Survey Wave A (English).	1,000	1	20/60	333
	Nonsmoker Survey Wave A (Spanish).	100	1	20/60	33
	Nonsmoker Survey Wave B (English).	808	1	20/60	269
	Nonsmoker Survey Wave B (Spanish).	25	1	20/60	8
	Nonsmoker Survey Wave C (English).	808	1	20/60	269
	Nonsmoker Survey Wave C (Spanish).	25	1	20/60	8
	Nonsmoker Survey Wave D (English).	808	1	20/60	269
	Nonsmoker Survey Wave D (Spanish).	25	1	20/60	8
	Nonsmoker Survey Wave E (English).	808	1	20/60	269
	Nonsmoker Survey Wave E (Spanish).	25	1	20/60	8
	Nonsmoker Survey Wave F (English).	808	1	20/60	269
	Nonsmoker Survey Wave F (Spanish).	25	1	20/60	8
	Nonsmoker Survey Wave G (English).	808	1	20/60	269
	Nonsmoker Survey Wave G (Spanish).	25	1	20/60	8
	Nonsmoker Survey Wave H (English).	808	1	20/60	269
	Nonsmoker Survey Wave H (Spanish).	25	1	20/60	8
	Nonsmoker Survey Wave I (English)	808	1	20/60	269
	Nonsmoker Survey Wave I (Spanish).	25	1	20/60	8
Total	.....	.....	.....	.....	9,311

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–08148 Filed 4–22–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–19–19ACC; Docket No. CDC–2019–0020]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled *Survey of Engineered Nanomaterial Occupational Safety and Health Practices*. The goal of this project is to assess the relevance and impact of NIOSH's contribution to guidelines and risk mitigation practices for safe handling of engineered nanomaterials in the workplace.

DATES: CDC must receive written comments on or before June 24, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0020 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Survey of Engineered Nanomaterial Occupational Safety and Health Practices—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

As mandated in the Occupational Safety and Health Act of 1970 (Pub. L. 91–596), the mission of the National Institute for Occupational Safety and Health (NIOSH) is to conduct research and investigations on work-related disease and injury and to disseminate information for preventing identified workplace hazards (Sections 20(a)(1) and (d), Attachment 1). This dual responsibility recognizes the need to translate research into workplace application if it is to impact worker safety and well-being. The goal of this project is to assess the relevance and impact of NIOSH's contribution to guidelines and risk mitigation practices for safe handling of engineered nanomaterials in the workplace. The intended use of this data is to inform NIOSH's research agenda to enhance its relevance and impact on worker safety and health in the context of engineered nanomaterials. NIOSH is in the process of procuring a contractor to perform the work, and is on schedule to award a contract by summer 2019. NIOSH requests a two year OMB clearance.

The research under this project will survey companies who manufacture, distribute, fabricate, formulate, use or provide services related to engineered nanomaterials. The analysis will describe the survey sample, response rates, and types of company by industry and size. Further analysis will focus on identifying the types of engineered nanomaterials being used in industry and the types of occupational safety and health practices being implemented. The analysis will be used to develop a final report which evaluates the influence of NIOSH products, services, and outputs on industry occupational safety and health practices.

Under this project, the following activities and data collections will be conducted:

(1) *Company Pre-calls.* Sampled companies will be contacted to identify the person who will complete the survey and to ascertain whether or not the company handles engineered nanomaterials.

(2) *Survey.* A web-based questionnaire, with a mail option, will be administered to companies. The purpose of the survey is to learn directly from companies about their use of NIOSH materials and their occupational safety and health practices concerning engineered nanomaterials.

A sample of 600 companies will be compiled from lists of industry associations, research reports, marketing databases, and web-based searches. Of the 600 selected companies we anticipate that 500 will complete the survey. The company pre-call is expected to require 5 minutes to complete. The survey is expected to require 20 minutes to complete; including the time it may take respondents to look-up and retrieve needed information. The estimated annualized burden hours for the respondents' time to participate in this information collection is 109 hours. There are no costs to the responders other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Receptionist	Pre-call	300	1	5/60	25
Occupational Health and Safety Specialist	Survey	100	1	20/60	34
Industrial Production Managers	Survey	75	1	20/60	25
Natural Science Managers	Survey	75	1	20/60	25
Total					109

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–08149 Filed 4–22–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–19–1097; Docket No. CDC–2019–0033]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Monitoring and Reporting System for the National Tobacco Control Program. This information collection is requested by CDC to monitor progress in the states and territories funded through two CDC cooperative agreements

DATES: CDC must receive written comments on or before June 24, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0033 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Monitoring and Reporting System for the National Tobacco Control Program—Reinstatement with Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) works with states, territories, tribal organizations, and the District of Columbia (collectively referred to as ''state-based'' programs) to develop, implement, manage, and evaluate tobacco prevention and control programs. Support and guidance for these programs have been provided through cooperative agreement funding and technical assistance administered by CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). Partnerships and collaboration with other federal agencies, nongovernmental organizations, local communities, public and private sector organizations, and major voluntary associations have been critical to the success of these efforts. NCCDPHP cooperative agreements DP15–1509 (National State-Based Tobacco Control Programs) and DP14–1410PPHF14 (Public Health Approaches for Ensuring Quitline Capacity) continue to support efforts since 1999 to build state health department infrastructure and capacity to implement comprehensive tobacco prevention and control programs. Through these cooperative agreements, health departments in all 50 states, the District of Columbia, Puerto Rico and Guam are funded to implement evidence-based environmental, policy, and systems strategies and activities designed to reduce tobacco use, secondhand smoke exposure, tobacco related disparities and associated disease, disability, and death.

CDC requests OMB approval to collect information from the 53 state-based programs funded under both DP15–1509 and DP14–1410PPHF14. Awardees will report information about their work plan objectives, activities, infrastructure, and performance measures. Each awardee will submit an Annual Work Plan Progress Report using an Excel-based Work Plan Tool. The estimated burden per response on each of the abovementioned tools is six hours for each. Each awardee will also submit an Annual Performance Measure report using an Excel-based Performance Measures tool. The estimated burden per response for this tool is five hours. Additionally, each awardee will submit an Annual Progress Report (APR) using an Excel-based APR tool. The estimated burden per response for the APR tool is 18 hours for each. Awardees will also submit an Annual Component Model of Infrastructure (CMI) using an Excel-based CMI tool, with an estimated burden per response of three hours, and an Annual Budget Progress Report using an Excel-based Budget Tool, with an estimated burden per response of five hours. The same instruments will be used for all information collection and reporting throughout the OMB approval period. Awardees will upload their information

to *www.grantssolutions.gov* on an annual basis to satisfy routine cooperative agreement reporting requirements.

CDC will use the information collected to monitor each awardee's progress and to identify facilitators and challenges to program implementation and achievement of outcomes. Monitoring allows CDC to determine whether an awardee is meeting performance and budget goals and to make adjustments in the type and level of technical assistance provided to them, as needed, to support attainment of their performance measures.

Monitoring and evaluation activities also allow CDC to provide oversight of the use of federal funds, and to identify and disseminate information about successful prevention and control strategies implemented by awardees. These functions are central to NCCDPHP's broad mission of reducing the burden of chronic diseases. Finally, the information collection will allow CDC to monitor the increased emphasis on partnerships and programmatic collaboration, and is expected to reduce duplication of effort, enhance program impact and maximize the use of federal funds. OMB approval is requested for three years. Participation in the information collection is required as a condition of funding. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State Tobacco Control Managers	Annual Work Plan Progress Report	53	1	6	318
	Annual Budget Progress Report	53	1	5	265
	Annual Performance Measures Progress Report.	53	1	5	265
	Annual CMI Progress Report	53	1	3	159
	Annual APR Report	53	1	18	954
Total	.....	.....	.....	.....	1,961

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–08153 Filed 4–22–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–19–0573; Docket No. CDC–2019–0034]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National HIV Surveillance System (NHSS). This data collection is for continuation of the National HIV Surveillance System which provides the primary population-based data used to describe the epidemiology of HIV in the United States including adult/adolescent and pediatric HIV case reporting, case report evaluations and updates, laboratory updates, deduplication activities, investigation reporting and evaluation, cluster reporting, perinatal HIV exposure reporting, and annual reporting of the standards evaluation report.

DATES: CDC must receive written comments on or before June 24, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0034 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

National HIV Surveillance System (NHSS) (OMB Control No. 0920–0573 Expiration 06/30/2019)—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is authorized under Sections 304 and 306 of the Public Health Service Act (42 U.S.C. 242b and 242k) to collect information on cases of human immunodeficiency virus (HIV) and indicators of HIV disease and HIV disease progression including AIDS. Data collected as part of the National HIV Surveillance System (NHSS) are the primary data used to monitor the extent and characteristics of the HIV burden in the United States. HIV surveillance data are used to describe trends in HIV incidence, prevalence and characteristics of infected persons and used widely at the federal, state, and local levels for planning and evaluating prevention programs and health-care services, and allocate funding for prevention and care.

As science, technology, and our understanding of HIV have evolved, the NHSS has been updated periodically. CDC in collaboration with health departments in the 50 states, the District of Columbia, and U.S. dependent areas, conducts national surveillance for cases of HIV infection that includes critical data across the spectrum of HIV disease from HIV diagnosis, to AIDS, the end-stage disease caused by infection with HIV, and death. In addition, this national system provides essential data to estimate HIV incidence, monitor patterns in HIV drug resistance and genetic diversity and identify and respond to clusters of recent and rapid transmission, as well as provide information on perinatal exposures in the United States. The CDC surveillance case definition has been modified periodically to accurately monitor disease in adults, adolescents and children and reflect use of new testing technologies and changes in HIV treatment. Information is then updated in the case report forms and reporting software as needed.

In 2018, CDC implemented activities under a new cooperative agreement PS18–1802: Integrated HIV Surveillance and Prevention Programs for Health Departments. The purpose of PS18 1802 is to implement a comprehensive HIV surveillance and prevention program to prevent new HIV infections and achieve viral suppression among persons living with HIV. In particular, the activities funded under the announcement promote and support improving health outcomes for persons living with HIV through achieving and sustaining viral suppression, and reducing health-related disparities by using quality, timely, and complete surveillance and program data to guide HIV prevention efforts. These goals are in accordance with the CDC's and national prevention goals, including the President's new initiative to End the HIV Epidemic in America. This information collection request revision includes activities to continue national surveillance program activities and align with program priorities under the new cooperative agreement (PS18–1802).

The revisions requested in this extension include minor modifications to currently collected data elements and forms (including the Adult Case Report Form (ACRF) and the Pediatric Case Report Form (PCRF)), modifications to data system variables used to summarize geocoded address data collected as part of the geocoding and data linkage activities, addition of new cluster report forms for health departments to report on progress for HIV cluster response activities and addition of investigation reporting and evaluation activities to account for additional data reported as part of these activities. No changes are being requested to data elements collected on the Perinatal HIV Exposure Reporting (PHER) form, but the number of jurisdictions (respondents) completing the form has been reduced. Minor changes to the information collected in the standards evaluation report form (SER) are also requested to align with changes in program activities under PS18–1802. Finally, we have updated our burden estimates to more accurately reflect current data collection practices (*e.g.,* adjusting the average burden per response for electronic laboratory updates and including a separate line item for deduplication activities previously included with case report evaluations and including new cumulative deduplication activities).

CDC provides funding for 59 jurisdictions to provide adult and pediatric HIV case reports. Health department staff compile information from laboratories, physicians, hospitals, clinics and other health care providers to complete the HIV adult and pediatric case reports. CDC estimates that approximately 854 adult HIV case reports and three pediatric case reports are processed by each health department annually.

These data are recorded using standard case report forms either on paper or electronically and entered into the electronic reporting system. Updates to case reports are also entered into the reporting system by health departments as additional information may be received from laboratories, vital statistics, or additional providers. Evaluations are also conducted by health departments on a subset of case reports (*e.g.* re-abstraction, validation). CDC estimates that on average approximately 86 evaluations of case reports, 2353 updates to case reports and 9410 updates of electronic laboratory test data will be processed by each of the 59 health departments annually. In addition, all 59 health departments will conduct routine deduplication activities for new diagnoses and cumulative case reports. CDC estimates that health departments on average will follow-up on 2741 reports as part of deduplication activities annually. Case report information compiled over time by health departments is then de-identified and forwarded to CDC on a monthly basis to become part of the national HIV surveillance database.

When necessary additional information may be reported by health departments for monitoring and evaluation of health department investigations including activities identifying persons who are not in HIV medical care and linking them to HIV medical care (*e.g.,* Data-to-Care activities) and other services and identifying and responding to clusters. CDC estimates health departments will on average process 901 responses related to investigation reporting and monitoring annually.

Clusters of HIV are groups of persons related by recent, rapid transmission, for which rapid response is needed in order to intervene to interrupt ongoing transmission and prevent future HIV infections. Health departments may detect clusters through multiple means, including through routine analyses of Surveillance data and other data reported to the NHSS. Data on clusters of recent and rapid HIV transmission in the United States will be collected to monitor situations necessitating public health intervention, assess health department response, and evaluate outcomes of intervention activities. These summary data will be collected

through quarterly cluster report forms that will be completed by health departments for clusters that they have identified and for which they are actively conducting response activities. Health departments will complete an initial cluster report form when a cluster is first identified, a cluster follow-up form for each quarter in which the cluster response remains active and a cluster close-out form when cluster response activities are closed or at annual intervals while a cluster response remains active. Completion of forms will be determined by the number of clusters detected. Health departments that do not identify recent and rapid clusters of HIV transmission will not complete any cluster report forms, while some jurisdictions will detect multiple recent and rapid clusters of HIV transmission, necessitating the completion of multiple cluster report forms. CDC estimates on average health departments will provide information for 2.5 cluster initial cluster reports, five Cluster Follow-up Form reports, and 2.5 Cluster Close-out Form reports annually.

Perinatal HIV surveillance and prevention activities with HIV exposure reporting and perinatal services coordination is an integrated approach to advancing the progress toward perinatal HIV elimination goals. A subset of 16 health departments in the most affected jurisdictions will be reporting using the Perinatal Exposure Reporting (PHER) form to monitor and evaluate perinatal HIV prevention efforts. An estimated 197 reports containing perinatal exposure data elements will be processed on average annually by each of the 16 health departments reporting data collected as part of PHER. These supplemental data are also reported monthly to CDC.

The Standards Evaluation Report (SER) is used by CDC and Health Departments to improve data quality, interpretation, usefulness, and surveillance system efficiency, as well as to monitor progress toward meeting surveillance program objectives. The information collected for the SER includes a brief set of questions about evaluation outcomes and the collection of laboratory data that will be reported one time a year by each 59 health departments.

TABLE 1—ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Health Departments	Adult HIV Case Report	59	854	20/60	16,795
Health Departments	Pediatric HIV Case Report	59	3	20/60	59
Health Departments	Case Report Evaluations	59	86	20/60	1,691
Health Departments	Case Report Updates	59	2,353	2/60	4,627
Health Departments	Laboratory Updates	59	9,410	0.5/60	4,627
Health Departments	Deduplication Activities	59	2,741	10/60	26,953
Health Departments	Investigation Reporting and Evaluation	59	901	1/60	886
Health Departments	Initial Cluster Report Form	59	2.5	1	148
Health Departments	Cluster Follow-up Form	59	5	30/60	148
Health Departments	Cluster Close-out Form	59	2.5	1	148
Health Departments	Perinatal HIV Exposure Reporting (PHER)	16	197	30/60	1,576
Health Departments	Annual Reporting: Standards Evaluation Report (SER).	59	1	8	472
Total					58,129

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–08152 Filed 4–22–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; National and Tribal Evaluation of the 2nd Generation of the Health Profession Opportunity Grants (OMB #0970–0462)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is proposing data collection activities as part of the Health Profession Opportunity Grants (HPOG) to Serve TANF Recipients and Other Low Income Individuals. ACF has developed a multi-pronged research and evaluation approach for the HPOG Program to better understand and assess the activities conducted and their results. Two rounds of HPOG grants have been awarded—the first in 2010 (HPOG 1.0) and the second in 2015 (HPOG 2.0). There are federal evaluations associated with each round of grants. HPOG grants provide funding to government agencies, community-based organizations, post-secondary educational institutions, and tribal-affiliated organizations to provide education and training services to Temporary Assistance for Needy Families (TANF) recipients and other low-income individuals, including tribal members. Under HPOG 2.0, ACF provided grants to five tribal-affiliated organizations and 27 non-tribal entities. OMB previously approved data collection under OMB Control Number 0970–0462 for the HPOG 2.0 National and Tribal Evaluation. The first submission, approved in August 2015, included baseline data collection instruments and the grant performance management system. A second submission, approved in June 2017, included additional data collection for the National Evaluation impact study, the National Evaluation descriptive study, and the Tribal Evaluation. A third submission for National Evaluation impact study data collection was approved in June 2018. The proposed data collection activities described in this **Federal Register** Notice will provide data for the impact, descriptive, and cost benefit studies of the 27 non-tribal grantees participating in the National Evaluation of HPOG 2.0.

DATES: *Comments due within 30 days of publication.* OMB is required to make a

decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget Paperwork Reduction Project *Email: OIRA_SUBMISSION@OMB.EOP.GOV* Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *OPREinfocollection@acf.hhs.gov*. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The HPOG 2.0 National Evaluation pertains only to the 27 non-tribal grantees that received HPOG 2.0 funding. The design for the National Evaluation features an impact study, a descriptive study, and a cost benefit study. The National Evaluation is using an *experimental design* to measure and analyze key participant outcomes including completion of education and training, receipt of certificates and/or degrees, earnings, and employment in a healthcare career. The impact evaluation will assess the outcomes for study participants that were offered HPOG 2.0 training, financial assistance, and support services, compared to outcomes for a control group that were not offered HPOG 2.0 services. ACF and the study team estimates that the non-tribal grantees will randomize about 40,000 applicants. As detailed in the burden estimates below, the study team will only survey a subset of those randomized. The goal of the descriptive study is to describe and assess the implementation, systems change, outcomes, and other important information about the operations of the 27 non-tribal HPOG grantees, which are operating 38 distinct programs. To achieve these goals, it is necessary to collect data about the non-tribal HPOG programs' design and implementation, HPOG partner and program networks, the composition and intensity of HPOG services received by participants, participant characteristics and HPOG experiences, and participant outputs and outcomes. The cost benefit study will estimate the costs of providing the HPOG 2.0 programs and compare the costs with gains in participant employment and earnings measured in the impact analysis. To achieve this goal, it is necessary to collect information from the 38 HPOG 2.0 programs on the cost of providing education and training and associated services. This Notice provides the opportunity to comment on proposed new information collection activities for the HPOG 2.0 National Evaluation's impact, descriptive, and cost-benefit studies.

The information collection activities to be submitted in the request package include:

1. *Screening Interview to identify respondents for the HPOG 2.0 National Evaluation descriptive study second-round telephone interviews.*

2. *HPOG 2.0 National Evaluation descriptive study second-round telephone interview guide* for program management, staff, partners, and stakeholders. These interviews will confirm or update information collected in a first round of calls, approved in June 2017. The second round interviews will update or confirm any new information about the HPOG program context and about program administration, activities and services, partner and stakeholder roles and networks, and respondent perceptions of the program's strengths.

3. *HPOG 2.0 National Evaluation descriptive study program operator interview guide* will collect information for the systems study from HPOG 2.0 programs operators. These interviews will collect information on how local service delivery systems (*i.e.,* the economic and service delivery environment in which specific HPOG 2.0 programs operate) may have influenced HPOG program design and implementation and how HPOG 2.0 implementation may have influenced these local systems.

4. *HPOG 2.0 National Evaluation descriptive study partner interview guide* will collect information for the systems study from HPOG 2.0 partner organizations.

5. *HPOG 2.0 National Evaluation descriptive study participant in-depth interview guide* will collect qualitative information about the experiences of treatment group members participating in HPOG 2.0 program services.

6. *Intermediate Follow-up Survey for the HPOG 2.0 National Evaluation impact study* will collect information from both treatment and control group members at the 27 non-tribal grantees, approximately 36 months after baseline data collection and random assignment. (Instrument 18_HPOG 2.0 Intermediate Follow-up Survey_10172018_FINAL.doc)

7. *HPOG 2.0 National Evaluation impact study instrument for a Pilot Study of Phone-Based Skills Assessment* will collect information from HPOG 2.0 study participants in a subset of non-tribal grantee programs. The phone-based questionnaire will pilot an assessment of respondents' literacy and numeracy skills to inform the selection of survey questions for inclusion in the intermediate follow-up survey.

8. *HPOG 2.0 National Evaluation Program Cost Survey* will collect information from program staff at the 27 non-tribal grantees to support the cost-benefit study.

At this time, the Department does not foresee the need for any subsequent requests for clearance for the HPOG 2.0 National and Tribal Evaluations.

Respondents: HPOG impact study participants from the 27 non-tribal HPOG 2.0 grantees (treatment and control group); HPOG program managers; HPOG program staff; and representatives of partner agencies and stakeholders, including support service providers, educational and vocational training partners, Workforce Investment Boards, and TANF agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Screening interview to identify respondents for the HPOG 2.0 National Evaluation descriptive study second-round telephone interviews	38	13	1	.5	7

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
HPOG 2.0 National Evaluation descriptive study second round telephone interview protocol	190	63	1	1.25	79
HPOG 2.0 National Evaluation descriptive study program operator interview guide	16	5	1	1.25	6
HPOG 2.0 National Evaluation descriptive study partner interview guide	112	37	1	1	37
HPOG 2.0 National Evaluation descriptive study participant in-depth interview guide	140	47	1	1.33	63
Intermediate follow-up survey for the HPOG 2.0 National Evaluation impact study	4,000	1,333	1	1	1,333
HPOG 2.0 National Evaluation impact study instrument for a Pilot Study of Phone-Based Skills Assessment	300	100	1	.75	75
HPOG 2.0 National Evaluation program cost survey	38	13	1	7	91

Estimated Total Annual Burden Hours: 1,691.

Authority: Section 2008 of the Social Security Act as enacted by Section 5507 of the Affordable Care Act.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–08163 Filed 4–22–19; 8:45 am]

BILLING CODE 4184–72–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; State Access and Visitation Grant Application (OMB #0970–0482)

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement is requesting a three-year extension of the application form titled, *Child Access and Visitation Grant Application Form,* expiration 8/31/2019. There are no changes requested to the form.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The application compiles detailed information regarding program administration, services planned, state priorities, and program safeguards for using grant funds to increase noncustodial parent access to and visitation with their children. This information allows OCSE to review states' Access and Visitation services for the purpose of ensuring compliance with federal regulation and to provide enhanced targeted technical assistance as indicated. The application is submitted one time at the beginning of a three year grant program cycle and only updated during the three years if a grantee proposes substantive programmatic or administrative change.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Child Access and Visitation Grant Application Form	54	1	10	540	180

Estimated Total Annual Burden Hours: 180.

Authority: Sec. 469B. [42 U.S.C.669b].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–08109 Filed 4–22–19; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Best Pharmaceuticals for Children Act (BPCA) Priority List of Needs in Pediatric Therapeutics

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH), *Eunice Kennedy Shriver* National Institute of Child Health and Human Development (NICHD) hereby announces the renewal of the Best Pharmaceuticals for Children Act (BPCA) Program. The Best Pharmaceuticals for Children Act (BPCA) seeks to improve the level of

information on the safe and effective use of pharmaceuticals used to treat children. The BPCA requires that the NIH identify the drugs of highest priority for study in pediatric populations, publish a list of drugs/needs in pediatric therapeutics, and fund studies in the prioritized areas. This notice will provide a brief summary of recent changes in the legislation, a brief update on the current progress of the BPCA Program and provide the current Priority List of Needs in Pediatric Therapeutics.

ADDRESSES: The complete Priority List of Needs in Pediatric Therapeutics 2018–2019 can be found on the BPCA website at the following address: *https://www.nichd.nih.gov/research/supported/bpca/activities*.

FOR FURTHER INFORMATION CONTACT: Dr. Perdita Taylor-Zapata via email at *taylorpe@mail.nih.gov;* or by phone at 301–496–9584.

SUPPLEMENTARY INFORMATION: The BPCA requires that the NIH, in consultation with the Food and Drug Administration and experts in pediatric research, identify the drugs and therapeutic areas of highest priority for study in pediatric populations. The NIH BPCA Program has been in existence since 2004 and is overseen by the Obstetric and Pediatric Pharmacology and Therapeutics Branch (OPPTB) of the NICHD. To date, the BPCA Program has prioritized over 150 drugs and therapeutic areas, funded more than 25 clinical studies, and improved the labeling to date of eight drugs and one device in the ongoing effort of advancing the knowledge of dosing, safety and effectiveness of medicines used in children. However, despite these and many other efforts, many gaps in our knowledge still remain regarding the use of therapeutics in children including the correct dosage, appropriate indications, side effects, and safety concerns of pharmaceuticals in the short- and long-term. These gaps result in inadequate labeling and/or wide-spread off-label use of prescription drugs in children. Off-label use of a drug substantially limits the ability to obtain important clinical information for more generalized use of a drug product, such as characterizing changes in drug metabolism and response during growth and development, identifying precision-based responses (*i.e.,* impact of genotype and phenotype of medication responses, the impact of obesity on dosing), and determining short- and long-term effects. The mandate of the NIH BPCA Program is to fill knowledge gaps that exist in pediatric therapeutics and to promote an increase in evidence-based data about medications used in children. Please see the BPCA website for more information: *https://www.nichd.nih.gov/research/supported/bpca/about*.

Update on the BPCA Legislation

First authorized in 2002, the Best Pharmaceuticals for Children Act (BPCA) has been reauthorized as part of larger Food and Drug Administration (FDA) user fee legislation three additional times: 2007, 2012, and now 2017. The overall mandate for the implementation of the research program at NIH has remained the same throughout, but with clarifications each time: To prioritize testing of pediatric therapeutics that do not have labeling for pediatric use, to sponsor clinical trials and other research to provide the necessary data, and to submit those data to the FDA to begin the process of obtaining label changes and provide clinicians with the appropriate information on appropriate pediatric use and dosing. In August of 2017, the BPCA legislation was reauthorized by Congress, which renewed the NIH BPCA Program for five years (the FDA portion of the program is permanently authorized). The new legislation also permits the NIH to prioritize research on the identification of biomarkers for pediatric diseases and conditions. In addition, a new provision specifically allows the NIH to post the data from the pediatric studies it funded on its public website when it submits the report to the FDA, as required for potential label changes.

Update on BPCA Prioritization

The BPCA Priority List consists of key therapeutic needs in the medical treatment of children and adolescents identified for further study; it is organized by therapeutic area, which can be a group of conditions, a subgroup of the population, or a setting of care. The first priority list of off-patent drugs needing further study under the 2002 BPCA legislation was published in January 2003 in the **Federal Register** (FR Vol. 68, No. 13; Tuesday, January 21, 2003: 2789–2790). The most recent priority list has been published to the BPCA website; more information on the prioritization process, all BPCA priority lists, and all **Federal Register** Notices can be found on the BPCA website: *https://www.nichd.nih.gov/research/supported/bpca/prioritizing-pediatric-therapies*. The BPCA authorizing legislation requires the NIH to update the priority list every three years. This Notice serves as an update to the BPCA priority list of needs in pediatric therapeutics.

Each year, the NICHD revisits the current list of needs in pediatric therapeutics and seeks input from experts in pediatric research and medicine to determine if previous needs still exist and if new areas of needs have developed.

Below is an updated list of therapeutic areas and drugs that have been prioritized for study since the inception of the BPCA and a summary of the NICHD's plans and progress in all of these areas to date. In 2017, the NIH BPCA Program focused on the following areas: Treatment options in Pediatric Hypertension, Biomarkers in Pediatric Research (various subspecialties), and Treatment strategies in several neonatal conditions (including Neonatal Opioid Withdrawal Syndrome, also known as Neonatal Abstinence Syndrome). Meeting minutes for workshops and lectures on the above topics can be found on the BPCA website *https://www.nichd.nih.gov/research/supported/bpca/research-initiatives-collaborations*.

For 2018, the NIH BPCA Program's priorities have included: Heart failure in children, Kidney diseases, and Lactation (in particular, neonatal and infant medication exposure). The NICHD welcomes input from the pediatric medical community on additional gaps in pediatric therapeutics for future consideration. The most recent BPCA stakeholders meeting was held in Bethesda, Maryland on March 22, 2019. More information will be provided on the BPCA website as it becomes available. All inquiries should be submitted to Dr. Perdita Taylor-Zapata at the contact information above.

Priority List of Needs in Pediatric Therapeutics 2018–2019

In accordance with the BPCA legislation, the list outlines priority needs in pediatric therapeutics for multiple therapeutic areas listed below. The complete list can be found on the BPCA website at the following address: *https://www.nichd.nih.gov/research/supported/bpca/activities*.

- Table 1: Infectious Disease Priorities
- Table 2: Cardiovascular Disease Priorities
- Table 3: Respiratory Disease Priorities
- Table 4: Intensive Care Priorities
- Table 5: Bio-defense Research Priorities
- Table 6: Pediatric Cancer Priorities
- Table 7: Psychiatric Disorder Priorities
- Table 8: Neurological Disease Priorities
- Table 9: Neonatal Research Priorities
- Table 10: Adolescent Research Priorities

- Table 11: Hematologic Disease Priorities
- Table 12: Endocrine Disease Priorities and Diseases with Limited Alternative Therapies
- Table 13: Dermatologic Disease Priorities
- Table 14: Gastrointestinal Disease Priorities
- Table 15: Renal Disease Priorities
- Table 16: Rheumatologic Disease Priorities
- Table 17: Special Considerations.

Dated: April 17, 2019.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2019–08167 Filed 4–22–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6101–N–04]

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2018

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on October 1, 2018 and ending on December 31, 2018.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Ariel Pereira, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10282, Washington, DC 20410–0500, telephone 202–708–3055 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the fourth quarter of calendar year 2018.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from October 1, 2018 through December 31, 2018. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the fourth quarter of calendar year 2018) before the next report is published (the first quarter of calendar year 2019), HUD will include any additional waivers granted for the fourth quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: April 16, 2019.

J. Paul Compton, Jr.,

General Counsel.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development October 1, 2018 Through December 31, 2018

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted. The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.
II. Regulatory waivers granted by the Office of Housing.
III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 92.252(d)(1) Utility Allowance Requirements.

Project/Activity: The City of Fitchburg, Massachusetts, requested a waiver of 24 CFR 92.252(d)(1) to allow use of the utility allowance established by local public housing agency for two HOME-assisted projects—Fitchburg Yarn Lofts and Ivory Keys Apartments.

Nature of Requirement: The regulation at 24 CFR 92.252(d)(1) requires participating jurisdictions to establish maximum monthly allowances for utilities and services (excluding telephone) and update the allowances annually. However, participating jurisdictions are not permitted to use the utility allowance established by the local public housing authority for HOME-assisted rental projects for which HOME funds were committed on or after August 23, 2013.

Granted By: Neal J. Rackleff, Assistant Secretary for Community Planning and Development.

Date Granted: October 3, 2018.

Reason Waived: The HOME requirements for establishing a utility allowances conflict with Project Based Voucher program requirements. It is not possible to use two different utility allowances to set the rent for a single unit and it is administratively burdensome to require a project owner establish and implement different utility allowances for HOME-assisted units and non-HOME assisted units in a project.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10170, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 91.500(a) and corresponding provisions in section III.B. of 83 FR 40314.

Project/Activity: HUD's CDBG–DR Action Plan Review Period Deadline for State of Florida, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

Nature of Requirement: This waiver extended HUD's review period from 45 days to 60 days from the date of receipt of the Action Plan Amendment, which is the period in 42 U.S.C. 12705(c)(1). Based on HUD's receipt date of November 16, 2018, 24 CFR 91.500(a) would require HUD to complete its review of Florida's and Puerto Rico's CDBG DR Action Plan Amendments by December 30, 2018; and the Department extended the period for those reviews to January 14, 2019. Based on HUD's receipt date of November 20, 2018, 24 CFR 91.500(a) would require HUD to complete its review of the U.S. Virgin Islands' CDBG DR Action Plan Amendment by January 3, 2019; and the Department extended that review period to January 18, 2019.

Granted By: David Woll Jr., Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 21, 2018.

Reason Waived: The devasting impact of Hurricanes Irma and Maria upon Florida, Puerto Rico, and the U.S. Virgin Islands is well established and the need for CDBG–DR funds is great to achieve long-term recovery. HUD may disapprove an amendment if it is incomplete. HUD works with grantees to resolve or provide additional information during the review period to avoid the need to disapprove the Action Plan or Action Plan Amendment. There were several issues related to the Action Plan Amendment, as submitted, that further discussion and revision during the review extension provided by this waiver would resolve, rather than HUD disapproving the Amendment which would have required grantees to take additional time to revise and resubmit their respective amendments. Additionally, the review period was curtailed by several holidays and the uncertainty of a federal government shutdown. This waiver avoided these delays in the award of the CDBG–DR funds to communities that continue to recovery from the hurricanes. As such, good cause was established, and the waiver was granted.

Contact: Claudette Fernandez, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7272, Washington DC 20410, telephone (202) 402–4592.

• *Regulation:* 24 CFR 91.500(a) and corresponding provisions in section III.B. of 83 FR 40314.

Project/Activity: HUD's CDBG–DR Action Plan Review Period Deadline for State of Texas.

Nature of Requirement: This waiver extended HUD's review period from 45 days to 60 days from the date of receipt of the Action Plan Amendment, which is the period in 42 U.S.C. 12705(c)(1). Based on HUD's receipt date of October 12, 2018, 24 CFR 91.500(a) would require HUD to complete its review of Texas's CDBG DR Action Plan Amendment by November 26, 2018; and the Department extended the period for that review to December 11, 2018.

Granted By: David Woll Jr., Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: November 30, 2018.

Reason Waived: The devasting impact of Hurricane Harvey upon Texas is well known and the need for CDBG–DR funds for Houston and Harris County is great to achieve long-term recovery. HUD may disapprove an amendment if it is incomplete. HUB works with grantees to resolve or provide additional information during the review period to avoid the need to disapprove the Action Plan or Action Plan Amendment. There were several issues related to the Action Plan Amendment, as submitted, that further discussion and revision during the review extension provided by this waiver would resolve, rather than HUD disapproving the Amendment which would have required the State to take additional time to revise and resubmit the Amendment. This waiver avoided this delay in the award of the CDBG–DR funds for the city of Houston and Harris County to recover from Hurricane Harvey. As such, good cause was established, and the waiver was granted.

Contact: Claudette Fernandez, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7272, Washington DC 20410, telephone (202) 402–4592.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Riverview Apartments I, FHA Project Number 033–SH014; and Riverview Apartments II, FHA Project Number 033–44052, Pittsburgh, PA. Riverview Apartments, Incorporated (Owner) seeks approval to defer repayment of the Flexible Subsidy Operating Assistance Loans on the subject projects.

Nature of Requirement: The regulation at 24 CFR 219.220(b) (1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Properties, states ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 15, 2018.

Reason Waived: The owner requested and was granted waiver of the requirement to repay the Flexible Subsidy Operating Assistance Loans in full when they became due. Deferring the loan payments will preserve these affordable housing resources for an additional 35 years through the execution and recordation of a Rental Use Agreement.

Contact: Cindy Bridges, Senior Account Executive, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6168, Washington, DC 20410, telephone (202) 402–2603.

Regulation: 24 CFR 219.220(b).

Project/Activity: Springvale Terrace, FHA Project Number 000–43072, Silver Spring, MD. Springvale Terrace, Incorporated (Owner) seeks approval to defer repayment of the Flexible Subsidy Operating Assistance Loan on the subject project.

Nature of Requirement: The regulation at 24 CFR 219.220(b) (1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Properties, states ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 15, 2018.

Reason Waived: The owner requested and was granted waiver of the requirement to repay the Flexible Subsidy Operating Assistance Loan in full when it became due. Deferring the loan payment will preserve the affordable housing resource for an additional 40 years through the execution and recordation of a Rental Use Agreement.

Contact: Cindy Bridges, Senior Account Executive, Office of Housing, Department of

Housing and Urban Development, 451 Seventh Street SW, Room 6168, Washington, DC 20410, telephone (202) 402–2603.

• Regulation: 24 CFR 219.220(b).

Project/Activity: Lyon County Retirement Home, FHA Project Number 092–SH023T, Marshall, Minnesota. Lyon County Retirement Home, Incorporated (Owner) seeks approval to defer repayment of the Flexible Subsidy Operating Assistance Loan on the subject project.

Nature of Requirement: The regulation at 24 CFR 219.220(b) (1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Properties, states ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2018.

Reason Waived: The owner requested and was granted waiver of the requirement to repay the Flexible Subsidy Operating Assistance Loan in full when it became due. Deferring the loan payment will preserve this affordable housing resource for an additional 20 years through the execution and recordation of a Rental Use Agreement.

Contact: Nathaniel Johnson, Senior Account Executive, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6172, Washington, DC 20410, telephone (202) 402–5156.

• *Regulation:* 24 CFR 266.200(b)(2).

Project/Activity: The Federal Financing Bank (FFB) Risk-Sharing Program regulations for 40 projects utilizing the Federal Financing Bank (FFB) Risk-Sharing Initiative through the end of Calendar Year 2019, Substantial Rehabilitation, Pennsylvania Housing Finance Agency (PHFA), Harrisburg, Pennsylvania, no project names listed.

Nature of Requirement: The Waiver of 24 CFR 266.200(b)(2), Substantial Rehabilitation. The Department will permit the revised definition of substantial rehabilitation (S/R) as described in the revised MAP Guide published on January 29, 2016, such that S/R is: Any scope of work that either (a) Exceeds in aggregate cost a sum equal to the 'base per dwelling unit limit' times the applicable High Cost Factor, or (b) Replacement of two or more building systems. 'Replacement' is when the cost of replacement work exceeds 50 percent of the cost of replacing the entire system.

The High Cost Factors for 2018 were recently published through a Housing Notice (HN) on May 23, 2018 and the revised statutory limits were published in the **Federal Register** on November 7, 2017. The 2018 base dwelling unit amount to determine substantial rehabilitation for FHA insured loan programs has been increased from $15,000 (changed from $6,500 per unit in the 2016 MAP guide) to $15,636. This amount will change annually based upon the change in the annual Consumer Price Index (CPI), along with the statutory limits or other inflation cost index published by HUD.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 21, 2018.

Reason Waived: Granted waivers of certain provisions of the Federal Financing Bank (FFB) Risk-Sharing Program regulations for forty (40) projects utilizing the Federal Financing Bank (FFB) Risk-Sharing Initiative through the end of Calendar Year 2019. Under this initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the Multifamily Risk Sharing Program.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

• Regulation: 24 CFR 266.200(b)(2).

Project/Activity: Federal Financing Bank (FFB) Risk-Sharing Program regulations for an additional fifteen (15) projects for a total of 40 projects utilizing the Federal Financing Bank (FFB) Risk-Sharing Initiative through the end of Calendar Year 2019, Substantial Rehabilitation, the Massachusetts Housing Partnership (MHP), Boston, Massachusetts, no project names listed.

Nature of Requirement: The Waiver of 24 CFR 266.200(b)(2), Substantial Rehabilitation. The Department will permit the revised definition of substantial rehabilitation (S/R) as described in the revised MAP Guide published on January 29, 2016, such that S/R is: Any scope of work that either a) Exceeds in aggregate cost a sum equal to the 'base per dwelling unit limit' times the applicable High Cost Factor, or b) Replacement of two or more building systems. 'Replacement' is when the cost of replacement work exceeds 50 percent of the cost of replacing the entire system.

The High Cost Factors for 2018 were recently published through a Housing Notice (HN) on May 23, 2018 and the revised statutory limits were published in the **Federal Register** on November 7, 2017. The 2018 base dwelling unit amount to determine substantial rehabilitation for FHA insured loan programs has been increased from $15,000 (changed from $6,500 per unit in the 2016 MAP guide) to $15,636. This amount will change annually based upon the change in the annual Consumer Price Index (CPI), along with the statutory limits or other inflation cost index published by HUD.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2018.

Reason Granted: Under this initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program. Granted waivers of certain provisions of the Federal Financing Bank (FFB) Risk-Sharing Program regulations for fifteen (15) projects utilizing the Federal Financing Bank (FFB) Risk-Sharing Initiative through the end of Calendar Year 2019.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693

• Regulation: 24 CFR 266.200(b)(2).

Project/Activity: The Federal Financing Bank (FFB) Risk-Sharing Program regulations for an additional four (4) projects for a total of 30 projects utilizing the Federal Financing Bank (FFB) Risk-Sharing Initiative through the end of Calendar Year 2019, Substantial Rehabilitation, California Housing Finance Agency (CalHFA), Sacramento, California, no project names listed.

Nature of Requirement: The Waiver of 24 CFR 266.200(b)(2), Substantial Rehabilitation. The Department will permit the revised definition of substantial rehabilitation (S/R) as described in the revised MAP Guide published on January 29, 2016, such that S/R is: Any scope of work that either (a) Exceeds in aggregate cost a sum equal to the 'base per dwelling unit limit' times the applicable High Cost Factor, or (b) Replacement of two or more building systems. 'Replacement' is when the cost of replacement work exceeds 50 percent of the cost of replacing the entire system.

The High Cost Factors for 2018 were recently published through a Housing Notice (HN) on May 23, 2018 and the revised statutory limits were published in the **Federal Register** on November 7, 2017. The 2018 base dwelling unit amount to determine substantial rehabilitation for FHA insured loan programs has been increased from $15,000 (changed from $6,500 per unit in the 2016 MAP guide) to $15,636. This amount will change annually based upon the change in the annual Consumer Price Index (CPI), along with the statutory limits or other inflation cost index published by HUD.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2018.

Reason Waived: Granted waivers of certain provisions of the Federal Financing Bank (FFB) Risk-Sharing Program regulations for four (4) projects utilizing the Federal Financing Bank (FFB) Risk-Sharing Initiative through the end of Calendar Year 2019. Under this initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the Multifamily Risk Sharing Program.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.200(b)(2).

Project/Activity: The Federal Financing Bank (FFB) Risk-Sharing Program regulations for an additional 20 projects for a total of 38 projects utilizing the Federal Financing Bank (FFB) Risk-Sharing Initiative through the end of Calendar Year 2019, Substantial Rehabilitation, Minnesota Housing Finance Agency (Minnesota Housing), St. Paul, Minnesota, no project names listed.

Nature of Requirement: The Waiver of 24 CFR 266.200(b)(2), Substantial Rehabilitation. The Department will permit the revised definition of substantial rehabilitation (S/R) as described in the

revised MAP Guide published on January 29, 2016, such that S/R is: Any scope of work that either (a) Exceeds in aggregate cost a sum equal to the 'base per dwelling unit limit' times the applicable High Cost Factor, or (b) Replacement of two or more building systems. 'Replacement' is when the cost of replacement work exceeds 50 percent of the cost of replacing the entire system.

The High Cost Factors for 2018 were recently published through a Housing Notice (HN) on May 23, 2018 and the revised statutory limits were published in the **Federal Register** on November 7, 2017. The 2018 base dwelling unit amount to determine substantial rehabilitation for FHA insured loan programs has been increased from $15,000 (changed from $6,500 per unit in the 2016 MAP guide) to $15,636. This amount will change annually based upon the change in the annual Consumer Price Index (CPI), along with the statutory limits or other inflation cost index published by HUD.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2018.

Reason Waived: Granted waivers of certain provisions of the Federal Financing Bank (FFB) Risk-Sharing Program regulations for twenty (20) projects utilizing the Federal Financing Bank (FFB) Risk-Sharing Initiative through the end of Calendar Year 2019. Under this initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the Multifamily Risk Sharing Program.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.200(c)(2).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Equity Take Outs. Pennsylvania Housing Finance Agency (PHFA), Harrisburg, Pennsylvania.

Nature of Requirements: The Waiver of 24 CFR 266.200(c)(2), Existing Projects ''Equity Take-outs''. The Department will permit the insured mortgage to exceed the sum of the total cost of acquisition, cost of financing, cost of repairs, and reasonable transaction costs, or ''equity take-outs'' in refinances of PHFA-financed projects and those outside PHFA's portfolio if the result is preservation with the following conditions:

1. Occupancy is no less than 93 percent for previous 12 months;

2. No defaults in the last 12 months of the HFA loan to be refinanced;

3. A 20-year affordable housing deed restriction placed on title that conforms to the Section 542(c) statutory definition;

4. A Property Capital Needs Assessment (PCNA) must be performed and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and

5. For projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts:

a. Owner agrees to renew HAP contract(s) for 20-year term, (subject to appropriations and statutory authorization, etc.), and

b. In accordance with regulations in 24 CFR 883.306(e), and Housing Notice 2012–14—Use of ''New Regulation'' Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts of Offset Project-Based Section 8 Housing Assistance Payments, if at any time PHFA determines that a project's excess funds (surplus cash) after project operations, reserve requirements and permitted distributions are met, PHFA must place the excess funds into a separate interest-bearing account. Upon renewal of a HAP Contract the excess funds can be used to reduce future HAP payments or other project operations/purposes. When the HAP Contract expires, is terminated, or any extensions are terminated, any unused funds remaining in the Residual Receipt Account at the time of the contract's termination must be returned to HUD.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 21, 2018.

Reason Waived: Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24CFR 266.200(c)(2).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Equity Take Outs. Massachusetts Housing Partnership (MHP), Boston, Massachusetts.

Nature of Requirement: The Waiver of 24 CFR 266.200(c)(2), Existing Projects ''Equity Take-outs''. The Department will permit the insured mortgage to exceed the sum of the total cost of acquisition, cost of financing, cost of repairs, and reasonable transaction costs, or ''equity take-outs'' in refinances of MHP-financed projects and those outside MHP's portfolio if the result is preservation with the following conditions:

1. Occupancy is no less than 93 percent for previous 12 months;

2. No defaults in the last 12 months of the HFA loan to be refinanced;

3. A 20-year affordable housing deed restriction placed on title that conforms to the Section 542(c) statutory definition;

4. A Property Capital Needs Assessment (PCNA) must be performed and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and

5. For projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts:

a. Owner agrees to renew HAP contract(s) for 20-year term, (subject to appropriations and statutory authorization, etc.), and

b. In accordance with regulations in 24 CFR 883.306(e), and Housing Notice 2012–14—Use of ''New Regulation'' Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts of Offset Project-Based Section 8 Housing Assistance Payments, if at any time MHP determines that a project's excess funds (surplus cash) after project operations, reserve requirements and permitted distributions are met, MHP must place the excess funds into a separate interest-bearing account. Upon renewal of a HAP Contract the excess funds can be used to reduce future HAP payments or other project operations/purposes. When the HAP Contract expires, is terminated, or any extensions are terminated, any unused funds remaining in the Residual Receipt Account at the time of the contract's termination must be returned to HUD.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2018.

Reason Waived: Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.200(c)(2).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Equity Take Outs. California Housing Finance Agency (CalHFA), Sacramento, California

Nature of Requirements: The Waiver of 24 CFR 266.200(c)(2), Existing Projects ''Equity Take-outs''. The Department will permit the insured mortgage to exceed the sum of the total cost of acquisition, cost of financing, cost of repairs, and reasonable transaction costs, or ''equity take-outs'' in refinances of CalHFA-financed projects and those outside CalHFA's portfolio if the result is preservation with the following conditions:

1. Occupancy is no less than 93 percent for previous 12 months;

2. No defaults in the last 12 months of the HFA loan to be refinanced;

3. A 20-year affordable housing deed restriction placed on title that conforms to the Section 542(c) statutory definition;

4. A Property Capital Needs Assessment (PCNA) must be performed and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and

5. For projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts:

a. Owner agrees to renew HAP contract(s) for 20-year term, (subject to appropriations and statutory authorization, etc.), and

b. In accordance with regulations in 24 CFR 883.306(e), and Housing Notice 2012–14—Use of ''New Regulation'' Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts of Offset Project-Based Section 8 Housing Assistance Payments, if at any time CalHFA determines that a project's excess funds (surplus cash) after project operations, reserve requirements and permitted distributions are met, CalHFA must place the excess funds into a separate interest-bearing account. Upon renewal of a HAP Contract the excess funds can be used to reduce future HAP payments or other project operations/purposes. When the HAP Contract expires, is terminated, or any extensions are terminated, any unused funds remaining in the Residual Receipt Account at the time of the contract's termination must be returned to HUD.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2018.

Reason Waived: Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.200(c)(2).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Equity Take Outs. Minnesota Housing Finance Agency (Minnesota Housing), St. Paul, Minnesota

Nature of Requirements: The Waiver of 24 CFR 266.200(c)(2), Existing Projects ''Equity Take-outs''. The Department will permit the insured mortgage to exceed the sum of the total cost of acquisition, cost of financing, cost of repairs, and reasonable transaction costs, or ''equity take-outs'' in refinances of Minnesota Housing-financed projects and those outside Minnesota Housing's portfolio if the result is preservation with the following conditions:

1. Occupancy is no less than 93 percent for previous 12 months;

2. No defaults in the last 12 months of the HFA loan to be refinanced;

3. A 20-year affordable housing deed restriction placed on title that conforms to the Section 542(c) statutory definition;

4. A Property Capital Needs Assessment (PCNA) must be performed and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and

5. For projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts:

a. Owner agrees to renew HAP contract(s) for 20-year term, (subject to appropriations and statutory authorization, etc.), and

b. In accordance with regulations in 24 CFR 883.306(e), and Housing Notice 2012–14—Use of ''New Regulation'' Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts of Offset Project-Based Section 8 Housing Assistance Payments, if at any time Minnesota Housing determines that a project's excess funds (surplus cash) after project operations, reserve requirements and permitted distributions are met, Minnesota Housing must place the excess funds into a separate interest-bearing account. Upon renewal of a HAP Contract the excess funds can be used to reduce future HAP payments or other project operations/purposes. When the HAP Contract expires, is terminated, or any extensions are terminated, any unused funds remaining in the Residual Receipt Account at the time of the contract's termination must be returned to HUD.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2018

Reason Waived: Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.200(d).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Underwriting of Projects with Section 8 HAP Contracts. Pennsylvania Housing Finance Agency (PHFA), Harrisburg, Pennsylvania.

Nature of Requirement: The Waivers of 24 CFR 266.200(d), Projects receiving Section 8 rental subsidies or other rental subsidies. For refinancing of Section 202 projects, and for Public Housing Authority (PHA) projects converting to Section 8 through the Rental Assistance Demonstration (RAD) Initiative, the Department will permit PHFA to underwrite the financing using current or to be adjusted project-based Section 8 assisted rents, even though they exceed the market rates. This is consistent with HUD Housing Notice 04–21, ''Amendments to Notice 02–16: Underwriting Guidelines for Refinancing of Section 202, and Section 202/8 Direct Loan Repayments'', which grants authority only to those lenders refinancing with mortgage programs under the National Housing Act.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 21, 2018.

Reason Waived: Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.200(d).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Underwriting of Projects with Section 8 HAP Contracts. Massachusetts Housing Partnership (MHP), Boston, Massachusetts.

Nature of Requirement: The Waivers of 24 CFR 266.200(d), Projects receiving Section 8 rental subsidies or other rental subsidies. For refinancing of Section 202 projects, and for Public Housing Authority (PHA) projects converting to Section 8 through the Rental Assistance Demonstration (RAD) Initiative, the Department will permit MHP to underwrite the financing using current or to be adjusted project-based Section 8 assisted rents, even though they exceed the market rates. This is consistent with HUD Housing Notice 04–21, ''Amendments to Notice 02–16: Underwriting Guidelines for Refinancing of Section 202, and Section 202/8 Direct Loan Repayments'', which grants authority only to those lenders refinancing with mortgage programs under the National Housing Act.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2018.

Reason Waived: Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.200(d).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Underwriting of Projects with Section 8 HAP Contracts. California Housing Finance Agency (CalHFA), Sacramento, California.

Nature of Requirement: The Waivers of 24 CFR 266.200(d), Projects receiving Section 8 rental subsidies or other rental subsidies. For refinancing of Section 202 projects, and for Public Housing Authority (PHA) projects converting to Section 8 through the Rental Assistance Demonstration (RAD) Initiative, the Department will permit CalHFA to underwrite the financing using current or to be adjusted project-based Section 8 assisted rents, even though they exceed the market rates. This is consistent with HUD Housing Notice 04–21, ''Amendments to Notice 02–16: Underwriting Guidelines for Refinancing of Section 202, and Section 202/8 Direct Loan Repayments'', which grants authority only to those lenders refinancing with mortgage programs under the National Housing Act.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2018.

Reason Waived: Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.200(d).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Underwriting of Projects with Section 8 HAP Contracts. Minnesota Housing Finance Agency (Minnesota Housing), St. Paul, Minnesota.

Nature of Requirement: The Waivers of 24 CFR 266.200(d), Projects receiving Section 8 rental subsidies or other rental subsidies. For refinancing of Section 202 projects, and for Public Housing Authority (PHA) projects converting to Section 8 through the Rental Assistance Demonstration (RAD) Initiative, the Department will permit Minnesota Housing to underwrite the financing using current or to be adjusted project-based Section 8 assisted rents, even though they exceed the market rates. This is consistent with HUD Housing Notice 04–21, ''Amendments to Notice 02–16: Underwriting Guidelines for Refinancing of Section 202, and Section 202/8 Direct Loan Repayments'', which grants authority only to those lenders refinancing with mortgage programs under the National Housing Act.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2018.

Reason Waived: Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.410(e).

Project/Activity: Illinois Housing Development Authority (IHDA), Chicago, Illinois, no project name or number.

Nature of Requirement: The 24 CFR 266.410(e), which requires mortgages insured under the 542(c) Housing Finance Agency Risk Sharing Program to be fully amortized over the term of the mortgage. The waiver would permit IHDA to use balloon loans that would have a minimum term of 17 years and a maximum amortization period of 40 years for the projects identified in the ''Multifamily Pipeline Projects''.

Granted By: D Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 6, 2018.

Reason Waived: The waiver was granted to allow IHDA's clients additional financing options to their customers and to align IHDA business practices with industry standards. This waiver is effective through October 31, 2020. The regulatory waiver is subject to the following conditions:

1. The waiver is limited to thirty (30) transactions and expires on October 31, 2020.

2. Illinois Housing Development Authority must elect to take 50 percent or more of the risk of loss on all transactions;

3. Mortgages made under this waiver may have amortization periods of up to 40 years, but with a minimum term of 17 years;

4. All other requirements of 24 CFR 266.410—Mortgage Provision remain applicable. The waiver is applicable only to loans made under Illinois Housing Development Authority's Risk Sharing Agreement;

5. In accordance with 24 CFR 266.200(d), the mortgage may not exceed an amount supportable by the lower of the Section 8 or comparable unassisted rents;

6. Projects must comply with Davis-Bacon labor standards in accordance with 24 CFR 266.225;

7. Illinois Housing Development Authority must comply with regulations stated in 24 CFR 266.210 for insured advances or insurance upon completion transactions;

8. The loans exceeding $50 million require a separate waiver request;

9. Occupancy is no less than 93 percent for previous 12 months;

10. No defaults in the last 12 months of the HFA loan to be refinanced;

11. A 20-year affordable housing deed restriction placed on title that conforms to the Section 542(c) statutory definition;

12. A Property Capital Needs Assessment (PCNA) must be performed and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and

13. For projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts:

i. a: Owner agrees to renew HAP contract(s) for 20-year term, (subject to appropriations and statutory authorization, etc.), and b: In accordance with regulations in 24 CFR 883.306(e), and Housing Notice 2012–14—Use of ''New Regulation'' Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts of Offset Project-Based Section 8 Housing Assistance Payments, if at any time IHDA determines that a project's excess funds (surplus cash) after project operations, reserve requirements and permitted distributions are met, IHDA must place the excess funds into a separate interest-bearing account. Upon renewal of a HAP Contract the excess funds can be used to reduce future HAP payments or other project operations/purposes. When the HAP Contract expires, is terminated, or any extensions are terminated, any unused funds remaining in the Residual Receipt Account at the time of the contract's termination must be returned.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.410(e).

Project/Activity: California Housing Finance Agency (CalHFA), Sacramento, California, no project name or number.

Nature of Requirement: The 24 CFR 266.410(e), which requires mortgages insured under the 542(c) Housing Finance Agency Risk Sharing Program to be fully amortized over the term of the mortgage. The waiver would permit CalHFA to use balloon loans that would have a minimum term of 17 years and a maximum amortization period of 40 years for the projects identified in the ''Multifamily Pipeline Projects''.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2018.

Reason Waived: The waiver was granted to allow CalHFA's clients additional financing options to their customers and to align CalHFA business practices with industry standards. The regulatory waiver is subject to the following conditions:

1. The waiver is limited to forty (40) transactions and expires on December 31, 2019.

2. CalHFA must elect to take 50 percent or more of the risk of loss on all transactions;

3. Mortgages made under this waiver may have amortization periods of up to 40 years, but with a minimum term of 17 years;

4. All other requirements of 24 CFR 266.410—Mortgage Provision remain applicable. The waiver is applicable only to loans made under CalHFA's Risk Sharing Agreement;

5. In accordance with 24 CFR 266.200(d), the mortgage may not exceed an amount supportable by the lower of the Section 8 or comparable unassisted rents;

6. Projects must comply with Davis-Bacon labor standards in accordance with 24 CFR 266.225;

7. CalHFA must comply with regulations stated in 24 CFR 266.210 for insured advances or insurance upon completion transactions;

8. The loans exceeding $50 million require a separate waiver request;

9. Occupancy is no less than 93 percent for previous 12 months;

10. No defaults in the last 12 months of the HFA loan to be refinanced;

11. A 20-year affordable housing deed restriction placed on title that conforms to the Section 542(c) statutory definition;

12. A Property Capital Needs Assessment (PCNA) must be performed and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and

13. For projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts:

i. a: Owner agrees to renew HAP contract(s) for 20-year term, (subject to appropriations and statutory authorization, etc.), and b: In accordance with regulations in 24 CFR 883.306(e), and Housing Notice 2012–14—Use of ''New Regulation'' Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts of Offset Project-Based Section 8 Housing Assistance Payments, if at any time CalHFA determines that a project's excess funds (surplus cash) after project operations, reserve requirements and permitted distributions are met, CalHFA must place the excess funds into a separate interest-bearing account. Upon renewal of a HAP Contract the excess funds can be used to reduce future HAP payments or other project operations/purposes. When the HAP Contract expires, is terminated, or any extensions are terminated, any unused funds remaining in the Residual Receipt Account at the time of the contract's termination must be returned.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, HTD, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.620(e).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Termination of Mortgage Insurance. Pennsylvania Housing Finance Agency (PHFA), Harrisburg, Pennsylvania

Nature of Requirement: The Waiver of 24 CFR 266.620(e) Termination of Mortgage Insurance. As required by the Initiative, PHFA agrees to indemnify HUD for all amount paid to FFB if ''the HFA or its successors commit fraud or make a material misrepresentation to the Commissioner with respect to information culminating in the Contract of Insurance on the mortgage, or while the Contract of Insurance is in existence''.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 21, 2018.

Reason Waived: Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make

multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Room Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.620(e).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Termination of Mortgage Insurance. Massachusetts Housing Partnership (MHP).

Nature of Requirement: The Waiver of 24 CFR 266.620(e) Termination of Mortgage Insurance. As required by the Initiative, MHP agrees to indemnify HUD for all amount paid to FFB if ''the HFA or its successors commit fraud or make a material misrepresentation to the Commissioner with respect to information culminating in the Contract of Insurance on the mortgage, or while the Contract of Insurance is in existence''.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2018.

Reason Waived: Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Room Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.620(e).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Termination of Mortgage Insurance. California Housing Finance Agency, Sacramento, California.

Nature of Requirement: The Waiver of 24 CFR 266.620(e) Termination of Mortgage Insurance. As required by the Initiative, CalHFA agrees to indemnify HUD for all amount paid to FFB if ''the HFA or its successors commit fraud or make a material misrepresentation to the Commissioner with respect to information culminating in the Contract of Insurance on the mortgage, or while the Contract of Insurance is in existence''.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2018.

Reason Waived: Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Room Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 266.620(e).

Project/Activity: Federal Financing Bank (FFB) Risk Sharing Initiative, Termination of Mortgage Insurance. Minnesota Housing Finance Agency (Minnesota Housing), St. Paul, Minnesota.

Nature of Requirement: The Waiver of 24 CFR 266.620(e) Termination of Mortgage Insurance. As required by the Initiative, Minnesota Housing agrees to indemnify HUD for all amount paid to FFB if ''the HFA or its successors commit fraud or make a material misrepresentation to the Commissioner with respect to information culminating in the Contract of Insurance on the mortgage, or while the Contract of Insurance is in existence''.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2018.

Reason Waived: Under this Initiative, FFB provides capital to participating Housing Finance Agencies (HFAs) to make multifamily loans insured under the FHA Multifamily Risk Sharing Program.

Contact: Patricia M. Burke, Acting Director, Office of Multifamily Production, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6130, Washington, DC 20410, telephone (202) 402–5693.

• *Regulation:* 24 CFR 881.205 (c).

Project/Activity: SouthPark Apartments, FHA Number 043–35441, Columbus, Ohio. Lewistown Broadway, LLC (Owner) seeks approval to allow for new equity associated with the 4% Tax Credits and bonds from Ohio Housing Finance Agency to be infused into the project to be considered as ''owner initial equity'' for the purpose of calculating distributions.

Nature of Requirement: The regulation at 24 CFR 881.205 (c) defines terms applicable to determining the allowable distribution, and under this section ''an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by HUD at cost certification (see § 881.405), unless the owner justifies a higher equity contribution by cost certification documentation in accordance with HUD mortgage insurance procedures.''

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 14, 2018.

Reason Waived: The owner requested and was granted waiver of the requirement to allow for ''new'' equity infused by Tax Credits and bonds to be included in the calculation of the owner's distribution to be considered under the allowable equity as described in section 24 CFR 881.205 (c). Granting this waiver is consistent with both programmatic objectives and the Secretary's goal of maintaining affordable housing for low-income persons.

Contact: Kimberly Britt, Supervisory Branch Chief, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6178, Washington, DC 20410, telephone (202) 402–7576.

IV. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 1000.240 and 24 CFR 1000.242.

Project/Activity: Iowa Tribe of Kansas and Nebraska Housing Authority of White Cloud, Kansas, requested a waiver of the requirement to enter into a local cooperation agreement with Doniphan County, Kansas, covering services for IHBG-assisted housing in the County.

Nature of Requirement: 24 CFR 1000.240 and 24 CFR 1000.242 require IHBG recipients to enter into local cooperation agreements with the appropriate taxing authorities and ensure IHBG-assisted units are exempt from taxation. These requirements can be waived pursuant to Section 101(c) of NAHASDA and 24 CFR 1000.244.

Granted By: Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: December 20, 2018.

Reason Waived: Waiver of the requirement was approved because the Housing Authority demonstrated a good faith effort to fulfill the local cooperation agreement requirements.

Contact: Wayne Sims, Administrator, Office of Public and Indian Housing, Department of Housing and Urban Development, 301 NW 6th Street, Suite 200, Oklahoma City, OK 73102, telephone (405) 609–8520.

• *Regulation:* 24 CFR 965.653(a).

Project/Activity: Missouri Valley Housing Authority (MVHA).

Nature of Requirement: This requirement states that public housing agencies (PHAs) must implement a policy prohibiting the use of prohibited tobacco products in all public housing living units and interior areas, as well as in outdoor areas within 25 feet of dwelling units and administrative buildings.

Granted By: General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 11, 2018.

Reason Waived: Based upon the information provided, the Department determined that good cause existed to allow MVHA to maintain a Designated Smoking Area (DSA) less than 25 feet from the development as the structure was constructed prior to the finalization of the rule and finds that moving the DSA would be cost prohibitive.

Contact: Monica Shepherd, Public Housing Management and Occupancy Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4208, Washington, DC 20410, telephone (202) 402–5687.

• *Regulation:* 24 CFR 965.653(a).

Project/Activity: Branson Housing Authority (BHA), Missouri.

Nature of Requirement: This requirement states that public housing agencies (PHAs) must implement a policy prohibiting the use of prohibited tobacco products in all public housing living units and interior areas, as well as in outdoor areas within 25 feet of dwelling units and administrative buildings.

Granted By: Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 15, 2018.

Reason Waived: Based upon the information provided, the Department determined that good cause existed to allow BHA to waive the requirement to prohibiting the use of prohibited tobacco products areas

within 25 feet of dwelling units and administrative buildings as this perimeter exceeds the PHA property boundary line and requiring residents to smoke in areas beyond BHA's property line would result in significant safety issues.

Contact: Monica Shepherd, Public Housing Management and Occupancy Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4208, Washington, DC 20410, telephone (202) 402–5687.

• *Regulation:* 24 CFR 982.355(b).

Project/Activity: Shasta Housing Authority (SHA) in Redding, California, requested a waiver of regulation 24 CFR 982.355(b) to allow the agency to stop accepting income portability families into its voucher program.

Nature of Requirement: The regulation 24 CFR 982.355(b) states that a receiving public housing authority (PHA) cannot refuse to assist incoming portable families or direct them to another neighboring PHA for assistance but that HUD may determine, in certain instances, that a PHA is not required to accept incoming portable families, such as a PHA in a declared disaster area. However, the PHA must have approval in writing from HUD before refusing any incoming portable families.

Granted By: Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 4, 2018.

Reason Waived: This waiver was approved because Shasta and Trinity Counites are presidentially declared disaster areas due to the Car fire burning in Northern California.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 985.101(a).

Project/Activity: Willimantic Housing Authority in Willimantic, Connecticut, requested a waiver of regulation 24 CFR 985.101(a) to allow them to submit the HUD required SEMAP certification after to the 60-day deadline.

Nature of Requirement: The regulation 24 CFR 985.101(a) requires public housing agencies (PHAs) to submit the HUD-required Section Eight Management Assessment Program (SEMAP) certification within 60 calendar days after the end of its fiscal year.

Granted By: Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 23, 2018.

Reason Waived: This waiver was approved due to confirmation from the Hartford Field office that the WHA submitted their SEMAP certification prior to the deadline but experienced technical issues on HUD's side of the system.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.301(f)(2)(ii) and 24 CFR 982.517.

Project/Activity: North Little Rock Housing Authority (NLRHA) requested a waiver of 24 CFR 983.301(f)(2)(ii) and 24 CFR 982.517 to establish a site-specific utility allowance at Holt District Homes, which is a Rental Assistance Demonstration (RAD) conversion site.

Nature of Requirement: The Public and Indian Housing (PIH) Notice—2018–11, H–2018–05, provides program requirements for the demonstration, which includes that a PHA may request a waiver from HUD for the aforementioned regulations in order to establish a site-specific utility allowance schedule at RAD conversion sites that also have non-RAD PBV units at the property.

Granted By: Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 4, 2018.

Reason Waived: This waiver was approved based on the finding that utility allowances, as currently calculated, would be excessive thus discouraging conservation and efficient use of HAP funds. Information submitted to HUD, by the NLRHA provides justification for the request.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.503(a)(3).

Project/Activity: The Housing Authority of the County of Los Angeles (HACoLA) in Alhambra, California, requested a waiver of the regulation 24 CFR 982.503(a)(3) for its HUD–VASH program so it could increase its payment standards for that program to 140 percent of the 2018 40th percentile Fair Market Rents (FMRs).

Nature of Requirement: The regulation, 24 CFR 982.503(a)(3) states that a public housing agency (PHA) voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area or may establish a separate payment standard amount for each designated part of the FMR area.

Granted By: Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 16, 2018.

Reason Waived: This waiver was approved because of the rising rents throughout the Los Angeles area and to better serve HUD–VASH families.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(4).

Project/Activity: Housing Authority of the City of Los Angeles (HACLA) requested a waiver of 24 CFR 982.505 (c)(4) to allow their agency to apply the increased payment standard to the subsidy calculation at the time the rent increase is approved instead of waiting until the family's first regular reexamination.

Nature of Requirement: The regulation 24 CFR 982.505(c)(4) states that, if the payment standard amount is increased during the term of the HAP contract, the increased payment standard amount shall be used to calculate the monthly HAP for the family beginning at the effective date of the family's first regular reexamination on or after the effective date of the increased in the payment standard amount.

Granted By: Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 16, 2018.

Reason Waived: This waiver was approved to allow assisted families to remain in their units at an affordable rent and minimize the disruption and cost of relocating in an extremely tight market with a less than 4 percent vacancy rate. Additionally, HACLA has sufficient funding to support this proposal to use the increased payment standards between regularly scheduled reexaminations.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 985.101(a).

Project/Activity: Albany Housing Authority (AHA) in, Albany New York, requested a waiver of regulation 24 CFR 985.101(a) due to an oversight and to prove that they submitted the HUD required SEMAP certification in a timely manner.

Nature of Requirement: The regulation 24 CFR 985.101(a) requires public housing agencies (PHAs) to submit the HUD-required Section Eight Management Assessment Program (SEMAP) certification within 60 calendar days after the end of its fiscal year.

Granted By: Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 23, 2018.

Reason Waived: This waiver was approved due to documentation of technical issues within PIC system.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.503(a)(3) and 24 CFR 982.503(c)(2).

Project/Activity: Burbank Housing Authority (BHA) in Burbank, California, requested a waiver of the regulation 24 CFR 982.503(a)(3) and 24 CFR 982.503(c)(2) for its HUD–VASH program so it could increase its payment standards for that program to 120

percent of the 2018 Fair Market Rents (FMRs) for zero and one-bedroom units.

Nature of Requirement: The regulation, 24 CFR 982.503(a)(3). states that a public housing agency (PHA) voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area or may establish a separate payment standard amount for each designated part of the FMR area. A waiver of this regulation is necessary to establish a separate payment standard for the HUD–VASH program. The second regulation 24 CFR 982.503(c)(2) states that the HUD office may approve an exception payment standard amount from 110 percent of the published FMR to 120 percent of the published FMR if the HUD Field Office determines that approval is justified by either the median rent method of the 40th of 50th percentile rent method and that such approval is also supported by an appropriated program justification.

Granted By: Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: December 4, 2018.

Reason Waived: This waiver was approved because of the rising rents throughout the Los Angeles area and to better serve HUD–VASH families.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 5.801(c) and 24 CFR 5.801(d)(1).

Project/Activity: Puerto Rico Housing Finance Authority (RQ911).

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 1, 2018.

Reason Waived: The HA requested relief from compliance for additional time to submit its financial reporting requirements for the fiscal year end (FYE) of June 30, 2017. The HA is still recovering from damages resulting from hurricanes which began September 20, 2017 and is in Category C of the applicable Major Disaster Declaration for Hurricane Maria. The circumstances preventing the HA from submitting its FYE 2017 audited financial data by the due date was acceptable. Accordingly, the HA has until March 31, 2019, to submit its audited financial information to the Department. The approval of the Financial Assessment Subsystem (FASS) audited financial submission only permits the extension for filing. The HA is required to contact the HUDOIG Single Audit Coordinator at *HUDOIGSingleAuditCoordinator@hudoig.gov* for Single Audit extensions applicable to the Federal Audit Clearinghouse.

Contact: Dee Ann R. Walker, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW, Suite 100, Washington, DC 20410, telephone (202) 475–7908.

• *Regulation:* 24 CFR 5.801(c) and 24 CFR 5.801(d)(1).

Project/Activity: Puerto Rico Department of Housing (RQ901).

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Dominique Blom, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: October 1, 2018.

Reason Waived: The HA requested relief from compliance for additional time to submit its financial reporting requirements for the fiscal year end (FYE) of June 30, 2017. The HA is still recovering from damages resulting from hurricanes which began September 20, 2017 and is in Category C of the applicable Major Disaster Declaration for Hurricane Maria. The circumstances preventing the HA from submitting its FYE 2017 audited financial data by the due date was acceptable. Accordingly, the HA has until March 31, 2019, to submit its audited financial information to the Department. The approval of the Financial Assessment Subsystem (FASS) audited financial submission only permits the extension for filing. The HA is required to contact the HUDOIG Single Audit Coordinator at *HUDOIGSingleAuditCoordinator@hudoig.gov* for Single Audit extensions applicable to the Federal Audit Clearinghouse.

Contact: Dee Ann R. Walker, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW, Suite 100, Washington, DC 20410, telephone (202) 475–7908.

[FR Doc. 2019–08170 Filed 4–22–19; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–929–931 (Third Review)]

Silicomanganese from India, Kazakhstan, and Venezuela

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted these reviews on September 4, 2018 (83 FR 44898) and determined on December 10, 2019, that it would conduct expedited reviews (84 FR 8544, March 8, 2019).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on April 17, 2019.[2] The views of the Commission are contained in USITC Publication 4881 (April 2019), entitled *Silicomanganese from India, Kazakhstan, and Venezuela: Investigation Nos. 731–TA–929–931 (Third Review)*.

By order of the Commission.

Issued: April 17, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–08068 Filed 4–22–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1067]

Certain Road Milling Machines and Components Thereof Commission Determination To Review in Part a Final Initial Determination; Schedule for Filing Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''the Commission'') has determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') finding a violation of section 337 of the Tariff Act of 1930, as

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Due to the lapse in appropriations and ensuing cessation of Commission operations, all import injury reviews conducted under authority of title VII of the Act accordingly have been tolled pursuant to 19 U.S.C. 1675(c)(5).

amended (''section 337''), in the above-referenced investigation on October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), on August 25, 2017, based on a complaint filed by Wirtgen America, Inc. of Antioch, Tennessee (''Wirtgen'' or ''Complainant''). 82 FR 40596–97 (Aug. 25, 2017). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 9,644,340 (''the '340 patent''); 9,624,628 (''the '628 patent''); 9,656,530 (''the '530 patent''); 7,530,641 (''the '641 patent''); and 7,828,309 (''the '309 patent''). The complaint named as respondents Caterpillar Bitelli SpA of Minerbio, Italy (''Caterpillar Bitelli''); Caterpillar Prodotti Stradali S.r.L. of Minerbio, Italy; Caterpillar Americas CV of Geneva, Switzerland; Caterpillar Paving Products, Inc. of Minneapolis, MN; and Caterpillar Inc. of Peoria, IL (''Caterpillar'' or ''Respondents''). *Id.* at 40596. The Office of Unfair Import Investigations is named as a party in this investigation. *Id.* Subsequently, the investigation was terminated as to respondent Caterpillar Bitelli. The investigation was also terminated with respect to the '628 patent.

The evidentiary hearing on the question of violation of section 337 was held April 20–24, 2018. The ALJ issued a final ID on violation on October 1, 2018. The ID found that a violation of section 337 has occurred in this investigation with respect to the '530 and '309 patents, and no violation of section 337 has occurred with respect to the '641 and '340 patent. The Commission determined to extend the deadlines for determining whether to review the final ID and/or the target date of the investigation by notices dated February 21, 2019; February 4, 2019; and November 9, 2018. We note that these notices inadvertently misstated that the ALJ found no violation of section 337 in this investigation, and we hereby correct those misstatements. The ALJ issued his recommended determination (''RD'') on remedy, the public interest and bonding on October 18, 2018. The RD recommended that if the Commission finds a violation of section 337 in the present investigation, the Commission should: (1) Issue a limited exclusion order (''LEO'') covering products that infringe the patent claims as to which a violation of section 337 has been found; (2) issue a cease and desist order (''CDO''); and (3) require no bond during the Presidential review period.

Both parties to the investigation filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions. The parties also timely filed their respective Public Interest Statements pursuant to 19 CFR 210.50(a)(4). Responses from the public were likewise received by the Commission pursuant to notice. *See* Notice of Request for Statements on the Public Interest (Oct. 16, 2018).

Having examined the record in this investigation, including the final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. In particular, the Commission has determined to review the ALJ's findings and analysis pertaining to the obviousness determinations with regard to claims 26, 35, and 36 of the '309 patent, *see* ID at 107–111, 120–123, 124–128, 128–130, 130–136, and, on review, to state that these findings and analysis lead to the conclusion that claims 26, 35, and 36 are invalid as obvious. As a result, the Commission modifies the conclusion of law No. 18 on page 436 of the ID to read as follows: ''18) Caterpillar has shown through clear and convincing evidence that asserted claim 36 of the '309 Patent is invalid as obvious under 35 U.S.C. 103. Caterpillar has not shown through clear and convincing evidence that asserted claims 10 and 29 of the '309 Patent are invalid under 35 U.S.C. 103.''

The Commission has determined not to review the remainder of the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest and bonding. Such submissions should address the recommended determination on remedy, the public interest and bonding issued on October 18, 2018, by the ALJ. Complainants are also requested to submit proposed remedial orders for the Commission's consideration.

Complainants are further requested to provide the expiration date of the '530 and '309 patents, the HTSUS numbers

under which the accused articles are imported, and any known importers of the accused products. The written submissions and proposed remedial orders must be filed no later than the close of business on May 1, 2019. Reply submissions must be filed no later than the close of business on May 8, 2019. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1067'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronicfiling.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: April 17, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–08104 Filed 4–22–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by Section 10 of the FACA.

DATES: The APB will meet in open session from 9:00 a.m. until 5:30 p.m., on June 5, 2019.

ADDRESSES: The meeting will take place at Hyatt Regency Jacksonville Riverfront Hotel, 225 East Coastline Drive, Jacksonville, FL 32202, telephone (904) 588–1234.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Jillana Plybon; Management and Program Analyst; CJIS Training and Advisory Process Unit, Resources Management Section; FBI CJIS Division, Module C2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149; telephone (304) 625–5424, facsimile (304) 625–5090.

SUPPLEMENTARY INFORMATION: The FBI CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Next Generation Identification, Interstate Identification Index, Law Enforcement Enterprise Portal, National Crime Information Center, National Instant Criminal Background Check System, National Incident-Based Reporting System, National Data Exchange, and Uniform Crime Reporting.

This meeting is open to the public. All attendees will be required to check-in at the meeting registration desk. Registrations will be accepted on a space available basis. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Designated Federal Officer (DFO). Any member of the public may file a written statement with the Board. Written comments shall be focused on the APB's current issues under discussion and may not be repetitive of previously submitted written statements. Written comments should be provided to Mr. Nicky J. Megna, Acting DFO, at least seven (7) days in advance of the meeting so that the comments may be made available to the APB for their consideration prior to the meeting.

Anyone requiring special accommodations should notify Mr. Megna at least seven (7) days in advance of the meeting.

Dated: April 1, 2019.

Nicky J. Megna,

Acting CJIS Designated Federal Officer, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 2019–08161 Filed 4–22–19; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; National Dislocated Workers Emergency Grant Application and Reporting Procedures

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL's) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''National Dislocated Workers Emergency Grant Application and Reporting Procedures.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by June 24, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely

respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Sharon McDowell by telephone at 202–693–3537 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *mcdowell.sharon@dol.gov*.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, 200 Constitution Avenue NW, Washington, DC 20210; by email: *mcdowell.sharon@dol.gov*; or by Fax 202–693–3817.

FOR FURTHER INFORMATION CONTACT: Sharon McDowell by telephone at 202–693–3537 (this is not a toll-free number) or by email at *mcdowell.sharon@dol.gov*.

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The information collection is necessary for the U.S. Department of Labor's (DOL's) award of National Dislocated Worker Grants (NDWGs), which are discretionary grants intended to temporarily expand the service capacity at the state and local area levels by providing funding assistance in response to major economic dislocations or other events, as defined in the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to ensure appropriate consideration, comments should mention OMB control number 1205–0439.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Type of Review: Extension without changes.

Title of Collection: National Dislocated Workers Emergency Grant Application and Reporting Procedures.

Forms: ETA 9103–1, ETA 9103–2a, ETA 9103–2b, ETA 9103–3, ETA 9104, ETA 9105, ETA 9106, ETA 9107.

OMB Control Number: 1205–0439.

Affected Public: State local and tribal governments.

Estimated Number of Respondents: 159.

Frequency: Ongoing, as needed.

Total Estimated Annual Responses: 1,587 hours.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 1,086 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Molly E. Conway,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2019–08125 Filed 4–22–19; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Vacancy Posting for a District Chief Administrative Law Judge

Summary of Duties: The position of District Chief Administrative Law Judge is a field position within the organizational structure of the Office of Administrative Law Judges (OALJ) of the U.S. Department of Labor (DOL). The District Chief Judge position reports through one of the Associate Chief Judges to the Chief Judge, who reports to the Deputy Secretary of Labor. OALJ District Offices are geographically located within DOL's designated regions.

As District Chief Judge, the incumbent serves as head of one of OALJ's eight District Offices and is responsible for the management and administrative supervision of that office. The District Office is composed of Administrative Law Judges, attorney advisors who serve as law clerks to the judges, and legal assistants. Each office operates self-sufficiently in that most administrative and support functions such as time keeping, procurement, travel, personnel, and case management and processing are handled at the local level, with general policy guidance provided by the National Office.

The District Chief Judge is responsible for providing the overall administrative and case management leadership necessary to assure the thorough and timely processing of all formal proceedings before the District Office. The District Chief Judge performs the full range of administrative functions, including the formulation of District Office budgetary and personnel resource needs, execution of applicable personnel policies and practices, and management of the case assignment, case monitoring, and hearing processes. In addition, the District Chief Judge is expected to carry out the full range of duties as an Administrative Law Judge, including presiding at hearings in some of the most sensitive, difficult and controversial proceedings that come before the office.

Appointment Type: Excepted.

Qualifications: Applicant must currently hold, and must have held for the past three years, a Federal Administrative Law Judge Position, at the AL–3 level or above, or be eligible

for reinstatement to an ALJ position based on prior experience as an ALJ at the AL–3 level or above. Licensure and authorization to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the laws of the United States.

An ''active'' bar status and/or membership in ''good standing'' for at least 10 years total in at least one jurisdiction in which the applicant is admitted. Judicial status is acceptable in lieu of ''active'' status in States that prohibit sitting judges from maintaining ''active'' status to practice law. Being in ''good standing'' is acceptable in lieu of ''active'' status in jurisdictions where the licensing authority considers ''good standing'' as having a current license to practice law. Applicant must have at least seven years of relevant litigation or administrative law experience. Relevant litigation experience can include: Preparing for, participating in, and/or conducting formal hearings, trials, or appeals at the federal, state, or local level; participating in settlement or plea negotiations in advance of such proceedings; hearing cases; preparing opinions; and participating in or conducting arbitration, mediation, or other alternative dispute resolution. Relevant administrative law experience is litigation experience in cases initiated before a governmental administrative body.

Applicant must have knowledge of statutes enforced by the Department of Labor, such as the Black Lung Benefits Act, Service Contract Act, Longshore and Harbor Workers' Compensation Act, Fair Labor Standards Act, whistleblower protections enforced by the Occupational Safety and Health Administration, or of other similar laws.

Desirable Qualifications: Experience in managing people, providing professional guidance, executive leadership, and oversight of legal or adjudicatory offices.

To Be Considered: Applicant must currently hold, and must have held for the past three years, a Federal Administrative Law Judge Position, at the AL–3 level or above, or be eligible for reinstatement to an ALJ position based on prior experience as an ALJ at the AL–3 level or above.

Closing Date: More information, including on the position duties, specific hiring policies, and application instructions, may be found on *www.usajobs.gov,* Vacancy Announcement No. DOL–AL–OALJ–19–03. Your application and ALL required supplemental documents must be received through *www.usajobs.gov* by 11:59 p.m. Eastern Time (ET) on the vacancy closing date.

Dated: April 17, 2019.

Bryan Slater,

Assistant Secretary for Administration & Management.

[FR Doc. 2019–08092 Filed 4–22–19; 8:45 am]

BILLING CODE 4510–20–P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities; Comment Request; Proposed Extension of the Approval of Information Collection Requirements; Records To Be Kept by Employers—Fair Labor Standards Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collection: Records to be kept by Employers—Fair Labor Standards Act. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 24, 2019.

ADDRESSES: You may submit comments identified by Control Number 1235–0018, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Compliance Specialist, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background

The Wage and Hour Division of the Department of Labor administers the Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.,*which sets the Federal minimum wage, overtime pay, recordkeeping, and youth employment standards of most general application. *See* 29 U.S.C. 206; 207; 211; 212. FLSA requirements apply to employers of employees engaged in interstate commerce or in the production of goods for interstate commerce and of employees in certain enterprises, including employees of a public agency; however, the FLSA contains exemptions that apply to employees in certain types of employment. *See* 29 U.S.C. 213, *et al.*

FLSA section 11(c) requires all employers covered by the FLSA to make, keep, and preserve records of employees and of wages, hours, and other conditions and practices of employment. *See* 29 U.S.C. 211(c). A FLSA covered employer must maintain the records for such period of time and make such reports as prescribed by regulations issued by the Secretary of Labor. *Id.*

The DOL has promulgated regulations 29 CFR part 516 to establish the basic FLSA recordkeeping requirements. The DOL has also issued specific sections of

regulations 29 CFR parts 10, 505, 519, 520, 525, 530, 547, 548, 549, 551, 552, 553, 570, 575, and 794 to supplement the part 516 requirements and to provide for the creation and maintenance of records relating to various FLSA exemptions and special provisions.

The Wage and Hour Division (WHD) uses this information to determine whether covered employers have complied with various FLSA requirements. Employers use the records to document FLSA compliance, including showing qualification for various FLSA exemptions.

The WHD seeks approval to extend this information collection related to various FLSA recordkeeping requirements.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Enhance the quality, utility, and clarity of the information to be collected;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks an approval for the extension of this information collection that requires employers to make, maintain, and preserve records in accordance with statutory and regulatory requirements.

Type of Review: Extension.

Agency: DOL—Wage and Hour Division.

Title: Records to be kept by Employers—Fair Labor Standards Act.

OMB Control Number: 1235–0018.

Affected Public: State, Local, and Tribal Governments; and Private Sector businesses or other for-profit, Not-for-profit institutions, Farms.

Agency Numbers: Form WH–14, Form WH–5.

Total Estimated Number of Respondents: 3,780,294.

Total Estimated Number of Annual Responses: 45,518,189.

Estimated Annual Total Burden Hours: 1,048,482.

Estimated Time per Response: various.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Costs (oper.ation/maintenance): $0.

Dated: April 17, 2019.

Robert M. Waterman,

Division of Regulations, Legislation and Interpretation.

[FR Doc. 2019–08073 Filed 4–22–19; 8:45 am]

BILLING CODE P

LEGAL SERVICES CORPORATION

Notice to LSC Grantees of Application Process for Subgranting 2020 Basic Field Funds

AGENCY: Legal Services Corporation.

ACTION: Notice of application dates and format for applications for approval to make subgrants of 2020 Basic Field Grant funds.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering Federal funds provided for civil legal services to low-income people. LSC hereby announces the submission dates for applications for subgrants of 2020 Basic Field Grant funds. LSC is also providing information about where applicants may locate subgrant application forms and directions for providing the information required to apply for a subgrant.

DATES: See **SUPPLEMENTARY INFORMATION** section for application dates.

ADDRESSES: Legal Services Corporation—Office of Compliance and Enforcement, 3333 K Street NW, Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: Megan Lacchini, Office of Compliance and Enforcement at *lacchinim@lsc.gov* or (202) 295–1506 or visit the LSC website at *http://www.lsc.gov/grants-grantee-resources/grantee-guidance/how-apply-subgrant*.

SUPPLEMENTARY INFORMATION: Under 45 CFR part 1627, LSC must publish, on an annual basis, ''notice of the requirements concerning the format and contents of the application annually in the **Federal Register** and on LSC's website.'' 45 CFR 1627.4(b). This Notice and the publication of the Subgrant Application Forms on LSC's website satisfy § 1627.4(b)'s notice requirement for the Basic Field Grant program. Only current or prospective recipients of LSC Basic Field Grants may apply for approval of a subgrant.

Applications for approval to make subgrants of calendar year 2020 Basic Field Grant funds will be available the week of April 22, 2019. Applications must be submitted through LSC Grants at *https://lscgrants.lsc.gov*. Applicants must submit their applications by 5:00 p.m. E.D.T. on the due date identified below.

Applicants must submit applications for approval to make subgrants in conjunction with their applications for 2020 Basic Field Grant funding. 45 CFR 1627.4(b)(1). The deadlines for application submissions are as follows:

• *June 3, 2019* for applicants that have not had an LSC Program Quality Visit (PQV) since January 1, 2017 and for applicants who are not current LSC recipients;

• *June 10, 2019* for applicants that have had a PQV since January 1, 2017, have received a final PQV report by April 30, 2019, and are the only applicant for the service area;

• *August 5, 2019* for applicants that have had a PQV since January 1, 2017, have received a final PQV report during the period May 1, 2019 through July 1, 2019, and are the only applicant for the service area.

The deadlines for the submission of final and signed subgrant agreements are as follows:

• *October 15, 2019* for applicants required to submit applications by June 3 and 10, 2019.

• *November 1, 2019* for applicants required to submit applications by August 5, 2019.

Applicants may also find these deadlines on LSC's website at *http://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant/basic-field-grant-key-dates*.

Applicants may access the application under the ''Subgrants'' heading on their LSC Grants home page. Applicants may initiate an application by selecting ''Initiate Subgrant Application.'' Applicants must then provide the information requested in the LSC Grants data fields, located in the Subrecipient Profile, Subgrant Summary, and Subrecipient Budget screens, and upload the following documents:

• A draft Subgrant Agreement (with the required terms provided in Subgrant Agreement Template); and

• Subgrant Inquiry Form B (for new subgrants) or C (for renewal subgrants).

Applicants seeking to subgrant to an organization that is not a current LSC grantee must also upload:

• The subrecipient's accounting manual (or letter indicating that the

subrecipient does not have one and why);

- The subrecipient's most recent audited financial statement (or letter indicating that the subrecipient does not have one and why);
- The subrecipient's current cost allocation policy (or letter indicating that the subrecipient does not have one and why);
- The subrecipient's current fidelity bond coverage (or letter indicating that the subrecipient does not have one);
- The subrecipient's conflict of interest policy (or letter indicating that the subrecipient does not have one); and
- The subrecipient's whistleblower policy (or letter indicating that the subrecipient does not have one)

LSC's Subgrant Agreement Template and Forms B, and C are available on LSC's website at *http://www.lsc.gov/grants-grantee-resources/grantee-guidance/how-apply-subgrant*.

LSC encourages applicants to use LSC's Subgrant Agreement Template as a model subgrant agreement. If the applicant does not use LSC's Template, the proposed agreement must include, at a minimum, the substance of the provisions of the Template.

Once submitted, LSC will evaluate the application and provide applicants with instructions on any needed modifications to the information, documents, or Draft Agreement provided with the application. The applicant must then upload a final and signed subgrant agreement through LSC Grants by the timeframes referenced above. This can be done by selecting ''Upload Signed Agreement'' to the right of the application ''Status'' under the ''Subgrant'' heading on an applicant's LSC Grants home page.

As required by 45 CFR 1627.4(b)(1)(ii), LSC will inform applicants of its decision to disapprove or approve the subgrant no later than the date LSC informs applicants of LSC's 2020 Basic Field Grant funding decisions.

Dated: April 17, 2019.

Stefanie Davis,

Assistant General Counsel.

[FR Doc. 2019–08096 Filed 4–22–19; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Request for Recommendations for Membership on Directorate and Office Advisory Committees

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) requests recommendations for membership on its scientific and technical Federal advisory committees. Recommendations should consist of the name of the submitting individual, the organization or the affiliation providing the member nomination, the name of the recommended individual, the recommended individual's curriculum vita, an expression of the individual's interest in serving, and the following recommended individual's contact information: Employment address, telephone number, fax number, and email address. Self-recommendations are accepted. If you would like to make a membership recommendation for any of the NSF scientific and technical Federal advisory committees, please send your recommendation to the appropriate committee contact person listed in the chart below.

ADDRESSES: The mailing address for the National Science Foundation is 2415 Eisenhower Avenue, Alexandria, VA 22314.

Web links to individual committee information may be found on the NSF website: NSF Advisory Committees.

SUPPLEMENTARY INFORMATION: Each Directorate and Office has an external advisory committee that typically meets twice a year to review and provide advice on program management; discuss current issues; and review and provide advice on the impact of policies, programs, and activities in the disciplines and fields encompassed by the Directorate or Office. In addition to Directorate and Office advisory committees, NSF has several committees that provide advice and recommendations on specific topics including: Astronomy and astrophysics; environmental research and education; equal opportunities in science and engineering; cyberinfrastructure; international science and engineering; and business and operations.

A primary consideration when formulating committee membership is recognized knowledge, expertise, or demonstrated ability.[1] Other factors that may be considered are balance among diverse institutions, regions, and groups underrepresented in science, technology, engineering, and mathematics. Committee members serve for varying term lengths, depending on the nature of the individual committee. Although we welcome the recommendations we receive, we regret that NSF will not be able to acknowledge or respond positively to each person who contacts NSF or has been recommended. NSF intends to publish a similar notice to this on an annual basis. NSF will keep recommendations active for 12 months from the date of receipt.

The chart below is a listing of the committees seeking recommendations for membership. Recommendations should be sent to the contact person identified below. The chart contains web addresses where additional information about individual committees is available.

Advisory committee	Contact person
Advisory Committee for Biological Sciences, *https://www.nsf.gov/bio/advisory.jsp*.	Brent Miller, Directorate for Biological Sciences; phone: (703) 292–8400; email: *bmiller@nsf.gov;* fax: (703) 292–2988.
Advisory Committee for Computer and Information Science and Engineering, *https://www.nsf.gov/cise/advisory.jsp*.	Brenda Williams, Directorate for Computer and Information Science and Engineering; phone: (703) 292–4554; email: *bwilliam@nsf.gov;* fax: (703) 292–9074.
Advisory Committee for Cyberinfrastructure, *https://www.nsf.gov/cise/aci/advisory.jsp*.	Carl Anderson, Division of Advanced Cyberinfrastructure; phone: (703) 292–4545; email: *cnanders@nsf.gov;* fax: (703) 292–9060.
Advisory Committee for Education and Human Resources, *https://www.nsf.gov/ehr/advisory.jsp*.	Keaven Stevenson, Directorate for Education and Human Resources; phone: (703) 292–8600; email: *kstevens@nsf.gov;* fax: (703) 292–9179.
Advisory Committee for Engineering, *https://www.nsf.gov/eng/advisory.jsp*.	Cecile Gonzalez, Directorate for Engineering; phone: (703) 292–8300; email: *cjgonzal@nsf.gov;* fax: (703) 292–9467
Advisory Committee for Geosciences, *https://www.nsf.gov/geo/advisory.jsp*.	Melissa Lane, Directorate for Geosciences: phone: (703) 292–8500; email: *mlane@nsf.gov;* fax: (703) 292–9042.

[1] Federally registered lobbyists are not eligible for appointment to these Federal advisory committees.

Advisory committee	Contact person
Advisory Committee for International Science and Engineering, *https://www.nsf.gov/od/oise/advisory.jsp*.	Roxanne Nikolaus, Office of International Science and Engineering, phone: (703) 292–7578; email: *rnikolau@nsf.gov;* fax: (703) 292–9067.
Advisory Committee for Mathematical and Physical Sciences, *https://www.nsf.gov/mps/advisory.jsp*.	Tomasz Durakiewicz, Directorate for Mathematical and Physical Sciences; phone: (703) 292–4892; email: *tdurakie@nsf.gov;* fax: (703) 292–9151.
Advisory Committee for Social, Behavioral & Economic Sciences, *https://www.nsf.gov/sbe/advisory.jsp*.	Deborah Olster, Directorate for Social, Behavioral & Economic Sciences; phone: (703) 292–8700; email: *dholster@nsf.gov;* fax: (703) 292–9083.
Advisory Committee for Polar Programs, *https://www.nsf.gov/geo/opp/advisory.jsp*.	Andrew Backe, Office of Polar Programs; phone: (703) 292–2454; email: *abacke@nsf.gov;* fax: (703) 292–9081.
Committee on Equal Opportunities in Science and Engineering, *https://www.nsf.gov/od/oia/activities/ceose/*.	Bernice Anderson, Office of Integrative Activities; phone: (703) 292–8040; email: *banderso@nsf.gov;* fax: (703) 292–9040.
Advisory Committee for Business and Operations, *https://www.nsf.gov/oirm/bocomm/*.	Jeffrey Rich, Office of Information and Resource Management; phone: (703) 292–8100; email: *jrich@nsf.gov;* fax: (703) 292–9369.
Advisory Committee for Environmental Research and Education, *https://www.nsf.gov/ere/ereweb/advisory.jsp*.	Leah Nichols, Office of Integrative Activities; phone: (703) 292–8040; email: *lenichol@nsf.gov;* fax: (703) 292–9040.
Astronomy and Astrophysics Advisory Committee, *https://www.nsf.gov/mps/ast/aaac.jsp*.	Elizabeth Pentecost, Division of Astronomical Sciences; phone: (703) 292–4907; email: *epenteco@nsf.gov;* fax: (703) 292–9452.
STEM Education Advisory Panel, *https://nsf.gov/ehr/STEMEdAdvisory.jsp*.	Keaven Stevenson, Directorate for Education and Human Resources; *Please visit website to submit recommendations*.

Dated: April 17,2019.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2019–08079 Filed 4–22–19; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0195]

Information Collection: Packaging and Transportation of Radioactive Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Packaging and Transportation of Radioactive Material.''

DATES: Submit comments by June 24, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0195. Address questions about docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T6–A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0195 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0195.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML18305A340 and ML18305A342, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov*.

B. Submitting Comments

Please include Docket ID NRC–2018–0195 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, you should inform those persons not to include identifying or contact information that

they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 71, ''Packaging and Transportation of Radioactive Material.''
2. *OMB approval number:* 3150–0008.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* On occasion. Application for package certification may be made at any time. Required reports are collected and evaluated on a continuous basis as events occur.
6. *Who will be required or asked to respond:* All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.
7. *The estimated number of annual responses:* 634 responses.
8. *The estimated number of annual respondents:* 220 respondents.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 30,589 hours.
10. *Abstract:* The NRC regulations in part 71 of title 10 of the *Code of Federal Regulations* (CFR) establish requirements for packaging, preparation for shipment, and transportation of licensed material, and prescribe procedures standards, and requirements for approval by NRC of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of Type A quantities. The NRC collects information pertinent to 10 CFR part 71 for three reasons; to issue a package approval; to ensure that any incidents or package degradation or defect are appropriately captured, evaluated and, if necessary, corrected to minimize future potential occurrences; and to ensure that any incidents or package degradation or defect are appropriately captured, evaluated and, if necessary, corrected to minimize future potential occurrences; and to ensure that all activities are completed using an NRC-approved quality assurance program.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 18th day of April 2019.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019–08138 Filed 4–22–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0099]

Biweekly Notice: Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from March 26, 2019 to April 8, 2019. The last biweekly notice was published on April 9, 2019.

DATES: Comments must be filed by May 23, 2019. A request for a hearing must be filed by June 24, 2019.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0099. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lynn Ronewicz, Office of Nuclear Reactor Regulations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1927, email: *Lynn.Ronewicz@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0099, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0099.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the

first time that it is mentioned in this document.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0099, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer

that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html*. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html*. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike,

Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly-available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment application(s), see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: February 5, 2019. A publicly-available version is in ADAMS under Accession No. ML19042A117.

Description of amendment request: The amendments would modify Technical Specification (TS) 3.5.2, ECCS [Emergency Core Cooling System]—Operating''; TS 3.6.6, ''Containment Spray System''; TS 3.7.5, ''Auxiliary Feedwater (AFW) System''; TS 3.7.6, ''Component Cooling Water (CCW) System''; TS 3.7.7, ''Nuclear Service Water System (NSWS)''; TS 3.7.9, ''Control Room Area Ventilation System (CRAVS)''; TS 3.7.11, ''Auxiliary Building Filtered Ventilation Exhaust System (ABFVES)''; TS 3.8.1, ''AC [Alternate Current] Sources—Operating''; and TS 3.8.4, ''DC [Direct Current] Sources—Operating,'' to remove expired TS footnotes. Additionally, the amendments would fix an editorial error in Section 3.0, ''SR [Surveillance Requirement] APPLICABILITY,'' specifically, SR 3.0.5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This LAR [license amendment request] proposes administrative non-technical changes only. These proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configurations of the facility. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed limits.

Given the above discussion, it is concluded the proposed amendment does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This LAR proposes administrative non-technical changes only. The proposed changes will not alter the design requirements of any Structure, System or Component (SSC) or its function during accident conditions. No new or different accidents result from the proposed changes. The changes do not involve a physical alteration of the plant or any changes in methods governing normal plant operation. The changes do not alter assumptions made in the safety analysis.

Given the above discussion, it is concluded the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

This LAR proposes administrative non-technical changes only. The proposed changes do not alter the manner in which safety limits, limiting safety systems settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis. The proposed changes do not adversely affect systems that respond to safety shutdown the plant and to maintain the plant in a safe shutdown condition.

Given the above discussion, it is concluded the proposed amendment does not involve a significant reduction in the safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kate B. Nolan, Deputy General Counsel, Duke Energy Carolinas, LLC, 550 South Tryon Street—DEC45A Charlotte, NC 28202–1802.

NRC Branch Chief: Michael T. Markley.

Exelon FitzPatrick, LLC and Exelon Generation Company, LLC, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York.

Date of amendment request: March 7, 2019. A publicly-available version is in ADAMS under Accession No. ML19066A251.

Description of amendment request: The amendment would revise the James A. FitzPatrick Nuclear Power Plant Technical Specification requirements regarding ventilation system testing in accordance with Technical Specifications Task Force (TSTF) Traveler, TSTF–522, Revision 0, ''Revise Ventilation System Surveillance Requirements to Operate for 10 Hours per Month'' (ADAMS Accession No. ML100890316). The NRC approved TSTF–522, Revision 0, as part of the consolidated line item improvement process on September 20, 2012 (77 FR 58421).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces an existing Surveillance Requirement to operate the SGT [Standby Gas Treatment] System equipped with electric heaters for a continuous 10-hour period every 31 days with a requirement to operate the systems for 15 continuous minutes with heaters operating.

The system is not an accident initiator and therefore, these changes do not involve a significant increase in the probability of an accident. The proposed system and filter testing change is consistent with current regulatory guidance for the system and will continue to assure that the system performs the design function which may include mitigating accidents. Thus, the change does not involve a significant increase in the consequences of an accident.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change replaces an existing Surveillance Requirement to operate the SGT System for a continuous 10-hour period every 31 days with a requirement to operate the system for 15 continuous minutes with heaters operating.

The change proposed for the ventilation system does not change any system operations or maintenance activities. Testing requirements will be revised and will continue to demonstrate that the Limiting Conditions for Operation are met, and the system components are capable of performing their intended safety functions. The change does not create new failure modes or mechanisms and no new accident precursors are generated.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change replaces an existing Surveillance Requirement to operate the SGT System equipped with electric heaters for a continuous 10-hour period every 31 days with a requirement to operate the systems for 15 continuous minutes with heaters operating, if needed.

The design basis for the ventilation systems' heaters is to heat the incoming air which reduces the relative humidity. The heater testing change proposed will continue to demonstrate that the heaters are capable of heating the air and will perform their design function. The proposed change is consistent with regulatory guidance.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Donald P. Ferraro, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Suite 305, Kennett Square, PA 19348.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: January 15, 2019. A publicly-available version is in ADAMS under Accession No. ML19017A136.

Description of amendment request: The amendment would revise the emergency response organization (ERO) positions identified in the Emergency Plan for the R. E. Ginna Nuclear Power Plant.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the Ginna Emergency Plan do not increase the probability or consequences of an accident. The proposed changes do not impact the function of plant Structures, Systems, or Components (SSCs). The proposed changes do not affect accident initiators or accident precursors, nor do the changes alter design assumptions. The proposed changes do not alter or prevent the ability of the onsite ERO to perform their intended functions to mitigate the consequences of an accident or event. The proposed changes remove ERO positions no longer credited or considered necessary in support of Emergency Plan implementation.

Therefore, the proposed changes to the Ginna Emergency Plan do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes have no impact on the design, function, or operation of any plant SSCs. The proposed changes do not affect plant equipment or accident analyses. The proposed changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed), a change in the method of plant operation, or new operator actions. The proposed changes do not introduce failure modes that could result in a new accident, and the proposed changes do not alter assumptions made in the safety analysis. The proposed changes remove ERO positions no longer credited or considered necessary in support of Emergency Plan implementation.

Therefore, the proposed changes to the Ginna Emergency Plan do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public.

The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analyses. There are no changes being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes. Margins of safety are unaffected by the proposed changes to the ERO staffing.

The proposed changes are associated with the Ginna Emergency Plan staffing and do not impact operation of the plant or its response to transients or accidents. The proposed changes do not affect the Technical Specifications. The proposed changes do not involve a change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Safety analysis acceptance criteria are not affected by these proposed changes. The proposed changes to the Emergency Plan will continue to provide the necessary onsite ERO response staff.

Therefore, the proposed changes to the Ginna Emergency Plan do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act

of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: May 25, 2018, as supplemented by letters dated October 12, 2018, and January 31, 2019.

Brief description of amendments: The amendments documented approval of elimination of periodic response time testing for a specific pressure transmitter, consistent with the Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Technical Specifications.

Date of issuance: April 3, 2019.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 208 (Unit 1), 208 (Unit 2), and 208 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML19070A218. Documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments approved allocated response time verification usage for a specific set of replacement components in lieu of directly measured response time testing.

Date of initial notice in **Federal Register**: July 31, 2018 (83 FR 36973). The supplemental letters dated October 12, 2018, and January 31, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 3, 2019.

No significant hazards consideration comments received: No.

Duke Energy Progress, LLC, Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake County, North Carolina

Date of amendment request: October 19, 2017, as supplemented by letters dated January 11, 2018, and September 19, 2018.

Brief description of amendment: The amendment revised the Renewed Facility Operating License to authorize revision of the Shearon Harris Nuclear Power Plant Updated Final Safety Analysis Report to incorporate the process based on the Tornado Missile Risk Evaluator Methodology described in its application, as supplemented. This methodology will only be applied to discovered conditions where tornado missile protection is not currently provided and cannot be used to avoid providing tornado missile protection in the plant modification process.

Date of issuance: March 29, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No.: 169. A publicly-available version is in ADAMS under Accession No. ML18347A385; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–63: The amendment revised the Renewed Facility Operating License.

Date of initial notice in **Federal Register**: February 13, 2018 (83 FR 6221). The supplemental letter dated September 19, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 29, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. STN50–455, Byron Station, Unit No. 2, Ogle County, Illinois

Date of amendment request: March 8, 2018, as supplemented by letters dated July 2, 2018; December 18, 2018; and January 16, 2019.

Brief description of amendment: The amendment revised Technical Specification (TS) 4.2.1 to authorize use of two lead test assemblies containing a limited number of accident tolerant fuel lead test rods during Byron Station, Unit No. 2, refueling cycles 22, 23, and 24. The lead test assemblies are non-limiting under steady state reactor conditions and will comply with fuel limits specified in the core operating limits report and TSs under all operational conditions.

Date of issuance: April 3, 2019.

Effective date: As of the date of issuance and shall be implemented prior to startup with the lead test assemblies.

Amendment No: 207. A publicly-available version is in ADAMS under Accession No. ML19038A017; documents related to this amendment are listed in the related Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–66: The amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in **Federal Register**: November 6, 2018 (83 FR 55573). The supplements dated July 2, 2018, and December 18, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The supplement dated January 16, 2019, changed the scope of the application as originally noticed by eliminating the license condition and requesting a change to TS 4.2.1. The change in scope and the updated proposed significant hazards consideration was published in the **Federal Register** on February 1, 2019 (84 FR 1240).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 3, 2019.

No significant hazards consideration comments received: No.

Florida Power & Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating Unit Nos. 3 and 4, Miami-Dade County, Florida

Date of amendment request: October 17, 2018; as supplemented by letters dated October 24, 2018; December 3, 2018; and January 31, 2019.

Brief description of amendments: The amendments modified the Renewed Facility Operating Licenses by revising paragraph 3.D, ''Transition License Conditions,'' to eliminate reliance on NRC approval of the Flowserve Reactor Coolant Pump (RCP) Seal Topical Report as a condition of Turkey Point Nuclear Generating's transition to National Fire Protection Association Standard 805, and instead documented the guidance outlined in NRC-approved Topical Report WCAP–16175–P–A, Revision 0, ''Model for Failure of RCP Seals Given Loss of Seal Cooling in CE [Combustion Engineering] NSSS [Nuclear Steam Supply System] Plants.'' A non-proprietary version of WCAP–16175–P–A, Revision 0, can be found in ADAMS under Accession No. ML071130383.

Date of issuance: March 27, 2019.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 286 (Unit No. 3) and 280 (Unit No. 4). A publicly-available version is in ADAMS under Accession No. ML19064A903; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: The amendments revised the Renewed Facility Operating Licenses.

Date of initial notice in **Federal Register**: December 26, 2018 (83 FR 66318). The supplemental letters dated December 3, 2018, and January 31, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 27, 2019.

No significant hazards consideration comments received: No.

NextEra Energy Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: March 31, 2017, as supplemented by letters dated April 12, 2018 (two); May 29, 2018; August 30, 2018; and March 13, 2019.

Brief description of amendments: The amendments revised the Point Beach Nuclear Plant, Units 1 and 2, operating licenses by adding a license condition to resolve construction truss design code nonconformances. The amendments approved a risk-informed approach to resolve legacy design code nonconformances associated with construction trusses in the containment buildings of Point Beach Nuclear Plant, Units 1 and 2, following the guidance in Regulatory Guide 1.174, Revision 2, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' issued May 2011.

Date of issuance: March 26, 2019.

Effective date: As of the date of issuance and shall be implemented in accordance with the requirements specified in paragraphs 4.I and 4.H of Renewed Facility Operating License Nos. DPR–24 and DPR–27, respectively.

Amendment Nos.: 263 (Unit 1) and 266 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18345A110; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–24 and DPR–27: The amendments revised the Renewed Facility Operating Licenses.

Date of initial notice in **Federal Register**: June 19, 2017 (82 FR 27890). The supplemental letters dated April 12, 2018 (two); May 29, 2018; August 30, 2018; and March 13, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 26, 2019.

No significant hazards consideration comments received: No.

NextEra Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: July 30, 2018.

Brief description of amendments: The amendments revised the Point Beach Nuclear Plant, Units 1 and 2, Technical Specifications (TSs), consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–547, Revision 1, ''Clarification of Rod Position Requirements.'' The amendments provide time to repair rod movement failures that do not affect rod operability, correct conflicts between the TSs, increase consistency between the subject TSs, and improve the format and presentation.

Date of issuance: March 27, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: 264 (Unit 1) and 267 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML19052A544; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–24 and DPR–27: The amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in **Federal Register**: November 6, 2018 (83 FR 55575).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 27, 2019.

No significant hazards consideration comments received: No.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 16, 2018.

Description of amendment request: The amendment revised the frequencies for performing the relative pressure measurement and the assessment of the control room envelope boundary required by Technical Specification 6.7.6.l, ''Control Room Envelope Habitability Program.''

Date of issuance: March 29, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No.: 160. A publicly-available version is in ADAMS under Accession No. ML19065A215; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–86: The amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** July 3, 2018 (83 FR 31186).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 29, 2019.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 13, 2018, as supplemented by two letters dated October 17, 2018.

Brief description of amendment: The amendment revised Hope Creek Generating Station Technical Specification 3.8.3.1, ''Distribution—Operating,'' to increase the alternating current inverters allowed outage time from 24 hours to 7 days. The change was based on application of the Hope Creek Generating Station probabilistic risk assessment in support of a risk-informed extension and on additional considerations and compensatory actions.

Date of issuance: March 27, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment No.: 215. A publicly-available version is in ADAMS under Accession No. ML19065A156; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–57: The amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** June 19, 2018 (83 FR 28462). Two supplemental letters dated October 17, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27, 2019.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: October 18, 2018, as supplemented by letters dated February 13, 2019, and March 8, 2019.

Brief description of amendments: The amendments revised the Renewed Facility Operating Licenses by changing license conditions associated with the fire protection program controlled by 10 CFR 50.48(c), ''National Fire Protection Association Standard NFPA 805.'' The amended license conditions incorporate changes made to Table S–2, ''Plant Modifications Committed,'' in Tennessee Valley Authority letter dated October 18, 2018, as supplemented by letters dated February 13, 2019, and March 8, 2019, which describes modifications necessary to transition into full compliance with 10 CFR 50.48(c).

Date of issuance: April 2, 2019.

Effective date: As of the date of issuance and shall be implemented immediately.

Amendment Nos.: 307 (Unit 1), 330, (Unit 2), and 290 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML19037A137; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: The amendments revised the Renewed Facility Operating Licenses.

Date of initial notice in ***Federal Register:*** December 18, 2018 (83 FR 64897). The supplemental letters dated February 13, 2019, and March 8, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 2, 2019.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Unit 1, Coffey County, Kansas

Date of amendment request: May 9, 2018, as supplemented by letter dated November 19, 2018.

Brief description of amendment: The amendment revised the Wolf Creek Generating Station Radiological Emergency Response Plan to (1) reduce the number of required emergency response organization positions, (2) standardize activation times for the technical support center to 75 minutes, (3) replace the current full-time normal work hours licensed medical practitioner position with on-shift first aid responders, and (4) remove reference to performing dose assessment using containment pressure indication.

Date of issuance: April 1, 2019.

Effective date: As of the date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment No.: 220. A publicly-available version is in ADAMS under Accession No. ML19052A546; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–42. The amendment revised the Wolf Creek Generating Station Radiological Emergency Response Plan.

Date of initial notice in ***Federal Register:*** July 3, 2018 (83 FR 31187). The supplemental letter dated November 19, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 2019.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 16th day of April, 2019

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–07933 Filed 4–22–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0100]

Safety Related Concrete Structures for Nuclear Power Plants (Other Than Reactor Vessels and Containments)

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG–1283, ''Safety Related Structures for Nuclear Power Plants (Other than Reactor Vessels and Containments).'' This proposed guide, revision 3, of RG 1.142, of the same name, was revised to endorse an updated version of American Concrete Institute code (ACI) 349–2013, ''Code Requirements for Nuclear Safety-

Related Concrete Structures and Commentary.''

DATES: Submit comments by June 24, 2019. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0100. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Madhumita Sircar, telephone: 301–415–1804; email: *Madhumita.Sircar@nrc.gov,* and Edward O'Donnell, telephone: 301–415–3317; email: *Edward.Odonnell@nrc.gov*. Both are staff members of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0100 when contacting the NRC about the availability of information regarding this action. You may obtain publically-available information related to this action, by any of the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0100.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Document collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The DG–1283 is available in ADAMS under Accession No. ML16172A240.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0100 in your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific issues or postulated events, and data that the staff needs in its review of applications for permits and licenses.

The DG, entitled, ''Safety Related Concrete Structures for Nuclear Power Plants (Other than Reactor Vessels and Containments),'' is temporarily identified by its task number, DG–1283. DG–1283 is proposed revision 3 of RG 1.142 of the same name. This revision of the guide (Revision 3) was updated to endorse, with certain exceptions, ACI 349–13, ''Code Requirements for Nuclear Safety-Related Concrete Structures and Commentary,'' except for Appendix D, ''Anchoring to Concrete.'' Appendix D to ACI 349–13 is separately endorsed by RG 1.199, ''Anchoring Components and Structural Supports in Concrete''.

III. Backfitting and Issue Finality

As discussed in the ''Implementation'' section of DG–1283, the NRC has no current intention to impose this draft regulatory guide on holders of current operating licenses or combined licenses. Accordingly, the issuance of this draft regulatory guide, if finalized, would not constitute ''backfitting'' as defined in section 50.109(a)(1) of title 10 of the *Code of Federal Regulations* (10 CFR) of the Backfit Rule or be otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52.

This draft regulatory guide may be applied to applications for operating licenses and combined licenses docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications for operating licenses and combined licenses submitted after the issuance of the regulatory guide. Such action would not constitute backfitting as defined in 10 CFR 50.109(a)(1) or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in 10 CFR part 52.

Dated at Rockville, Maryland, this 16th day of April, 2019.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2019–08093 Filed 4–22–19; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., April 30, 2019.

PLACE: 844 North Rush Street, Chicago, Illinois 60611.

STATUS: Closed.

MATTERS TO BE CONSIDERED: (1) Internal Personnel Matter.

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, Phone No. 312–751–4920.

Dated: April 19, 2019.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2019–08323 Filed 4–19–19; 4:15 pm]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85672; File No. SR–ISE–2019–11]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period for the Exchange's Nonstandard Expirations Pilot Program

April 17, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2019, Nasdaq ISE, LLC (''ISE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal [sic] to extend the pilot period for the Exchange's nonstandard expirations pilot program, currently set to expire on May 6, 2019.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE filed a proposed rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates.[5] The pilot program permits both Weekly Expirations and End of Month (''EOM'') expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. This pilot was subsequently extended through May 6, 2019.[6]

Supplementary Material .07(a) to ISE Rule 2009 provides that the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). Weekly Expirations are subject to all provisions of Exchange Rule 2009 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Pursuant to Supplementary Material .07(b) to ISE Rule 2009(b) the Exchange may open for trading End of Month (''EOM'') Expirations on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOMs are subject to all provisions of Rule 2009 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOMs are p.m.-settled.

The Exchange now proposes to amend Supplementary Material .07(c) to ISE Rule 2009 so that the duration of the pilot program for these nonstandard expirations will be through November 4, 2019. The Exchange continues to have sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will make public on its website any data and analysis it submits to the Commission under the pilot program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that its designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. By extending the pilot program, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the potential for adverse market effects of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Options with nonstandard expirations would be available for trading to all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 82458 (January 8, 2018), 83 FR 1636 (January 12, 2018) (approving SR–ISE–2017–111) (Notice of Filing of Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

[6] *See* Securities Exchange Act Release No. 85030 (February 1, 2019), 84 FR 2633 (February 7, 2019) (approving SR–ISE–2019–01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Nonstandard Expirations Pilot Program).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that investors may continue to trade nonstandard expiration options listed by the Exchange as part of the pilot program on an uninterrupted basis. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2019–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2019–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2019–11 and should be submitted on or before May 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–08105 Filed 4–22–19; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85673; File No. SR–ICC–2019–004]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to ICC's Model Validation Framework

April 17, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 5, 2019, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change, security-based swap submission, or advance notice as described in Items I, II and III below, which Items have been prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change, security-based swap submission, or advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to revise the ICC Model Validation Framework. These revisions do not require any changes to the ICC Clearing Rules (''Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B),

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

(a) Purpose

ICC proposes revisions to its Model Validation Framework. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed revisions are described in detail as follows.

The Model Validation Framework sets forth ICC's model validation procedures. Through the model validation procedures, ICC determines the appropriateness of changes to the risk modeling components (''Model Components'') of ICC's risk management system and the appropriateness of the configuration and calibration of ICC's risk management system. ICC's proposed changes consist of clarification updates related to the classification of Model Components, documentation requirements, the priority scale used by independent validators, and the annual validation of Model Components and related practices. ICC proposes to make such changes effective following Commission approval of the proposed rule change.

ICC proposes to revise the 'Risk Management System Models' section to account for Model Components that are no longer utilized. Currently, the Model Validation Framework notes new Model Components, which consider risk drivers that are not currently included in the risk management system, and enhancements to Model Components, which improve upon the methodologies used by the risk management system to consider a given risk driver or drivers (collectively, ''Model Change''). ICC proposes to amend the Model Validation Framework to also consider retired Model Components, which are no longer utilized in the risk management system.

In the 'Model Change Qualification and Materiality' section, ICC proposes to include a quantitative measure to define certain Model Changes. ICC classifies Model Changes as either Materiality A or Materiality B, depending on how substantially the Model Change affects the risk management system's assessment of risk for the related risk driver or drivers. ICC proposes to characterize any Model Change that leads to a decrease/increase of the total pre-funded financial resources over a certain percentage as a Materiality A Model Change.

The proposed revisions to the 'Documentation Requirements' section relate to the Model Inventory, which is maintained by the ICC Risk Department and contains key information about all Model Components and Model Changes. The Model Validation Framework specifies documentation requirements for the type of information maintained in the Model Inventory. ICC proposes updates to the documentation requirements to include retired Model Components and to remove information considered not relevant for purposes of the Model Inventory.

The proposed updates to the 'Independent Initial Validation' section relate to the priority scale used by independent validators. The Model Validation Framework requires independent initial validators to classify their findings based on a priority scale, consisting of high, medium, and low priority ratings. ICC proposes to amend the low priority rating to allow ICC, in consultation with the Risk Committee, to take no action with respect to the corresponding item if it does not reflect a potential deficiency.

ICC proposes clarifying changes to the 'Independent Periodic Review' section. ICC proposes to include additional information regarding how it tracks the annual validation of Model Components and related practices. The proposed changes specify that independent validators perform periodic reviews of Model Components and related practices at least every twelve months and that ICC relies on the date of the engagement letter to track this twelve month requirement. As part of the independent periodic review, the Model Validation Framework also directs independent validators to classify their findings based on the priority scale. ICC proposes amendments to the low priority rating to note that corresponding items may reflect deficiencies that create immaterial risks and that ICC, in consultation with the Risk Committee, may take no action with respect to the corresponding item if it does not reflect a potential deficiency.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act [3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F) [4], because ICC believes that the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, and contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible. The Model Validation Framework provides assurances as to the suitability of changes to Model Components and the appropriateness of the configuration and calibration of ICC's risk management system, including the appropriateness of risk requirements. The proposed changes to the Model Validation Framework provide additional detail and transparency regarding ICC's model validation procedures, which enhance ICC's approach to identifying potential weaknesses in ICC's risk management system by providing a process for reviewing and enhancing ICC's risk management system. Moreover, ICC believes that having policies and procedures that clearly and accurately document ICC's model validation procedures are an important component to the effectiveness of ICC's risk management system, which promotes the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions and the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions and to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible within the meaning of Section 17A(b)(3)(F) of the Act.[5]

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad–22.[6] Rule

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] *Id.*

[5] *Id.*

[6] 17 CFR 240.17Ad–22.

17Ad–22(b)(2)[7] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly. As described above, the Model Validation Framework sets forth ICC's model validation procedures, which provide assurances as to the appropriateness of changes to Model Components; the appropriateness of the configuration and calibration of ICC's risk management system, including through ongoing monitoring and validation; and the use of independent initial and annual validations. Such procedures serve to promote the soundness of Model Components and to ensure that ICC's risk management system is effective and appropriate in addressing the risks associated with clearing security based swap-related portfolios. Namely, the Model Validation Framework provides a process for continually reviewing and enhancing ICC's risk management system, including risk requirements, thereby promoting ICC's use of margin requirements to limit its credit exposures to participants under normal market conditions and ICC's use of risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly, consistent with Rule 17Ad–22(b)(2).[8]

Rule 17Ad–22(b)(3)[9] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two Clearing Participant (''CP'') families to which it has the largest exposures in extreme but plausible market conditions. The Model Validation Framework supports ICC's ability to maintain sufficient risk requirements and enhances ICC's approach to identifying potential weaknesses in the risk management system by requiring ICC to review and improve its risk management system, including through the use of independent initial and annual validations, thereby ensuring that ICC continues to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad–22(b)(3).[10]

Rule 17Ad–22(b)(4)[11] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated. The proposed changes to the Model Validation Framework require independent validators to perform periodic reviews of Model Components and related practices at least every twelve months and include additional detail regarding tracking the annual validation of Model Components and related practices, thereby ensuring that ICC provide for an annual model validation consisting of evaluating the performance of ICC's margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated, consistent with Rule 17Ad–22(b)(4).[12]

Rule 17Ad–22(d)(8)[13] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act.[14] The Model Validation Framework clearly assigns and documents responsibility and accountability for oversight of the Model Validation Framework and the performance of model validation procedures. The proposed revisions allow ICC, in consultation with the Risk Committee, to take no action with respect to certain items from independent validator reports. As such, the governance arrangements in the Model Validation Framework are clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of ICC personnel, ICC departments, the Risk Committee, and the Board is clearly documented, consistent with the requirements of Rule 17Ad–22(d)(8).[15]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to ICC's Model Validation Framework will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission, or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICC–2019–004 on the subject line.

[7] 17 CFR 240.17Ad–22(b)(2).

[8] *Id.*

[9] 17 CFR 240.17Ad–22(b)(3).

[10] *Id.*

[11] 17 CFR 240.17Ad–22(b)(4).

[12] *Id.*

[13] 17 CFR 240.17Ad–22(d)(8).

[14] 15 U.S.C. 78q–1.

[15] 17 CFR 240.17Ad–22(d)(8).

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2019–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation*. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2019–004 and should be submitted on or before May 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary .

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85674; File No. SR–NYSENAT–2019–09]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates

April 17, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 9, 2019, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates to (1) charge a fee for removing liquidity; (2) offer the current adding tier fees (Adding Tier 1, Adding Tier 2, Adding Tier 3, Adding Tier 4, and Step Up Adding Tier) for adding displayed liquidity in Tape B and Tape C securities and introduce separate fees for adding liquidity in Tape A securities; and (3) replace the current Taking Tier with three Taking Tiers (Tiers 1, 2 and 3). The Exchange proposes to implement the rule change on April 9, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees and Rebates to (1) charge a fee for removing liquidity; (2) offer the current adding tier fees (Adding Tier 1, Adding Tier 2, Adding Tier 3, Adding Tier 4, and Step Up Adding Tier) for adding displayed liquidity in Tape B and Tape C securities and introduce separate fees for adding displayed liquidity in Tape A securities; and (3) replace the current Taking Tier with three Taking Tiers (Tiers 1, 2 and 3).

The Exchange proposes to implement the rule change on April 9, 2019.[4]

Proposed Rule Change

Liquidity Removing Fees

The Exchange currently does not charge a fee for executions on the Exchange of orders that remove liquidity from the Exchange in securities priced at or above $1.00. The Exchange proposes to charge a fee of $0.0005 per share for executions on the Exchange of orders that remove liquidity from the Exchange in securities priced at or above $1.00, unless a better tiered credit or fee set forth in the Schedule of Fees and Rebates applies. Hence, for example, an ETP Holder that would meet the requirements for the proposed Taking Tier 1 credit discussed below would not be charged the proposed fee of $0.0005 per share for removing liquidity.

Proposed Changes to Adding Tiers

Adding Tier 1

Under current Adding Tier 1, the Exchange offers the following fees for transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the ETP Holder has at least 0.015% of Adding average daily volume (''ADV'') as a percent of US consolidated ADV (''CADV''): [5]

- $0.0020 per share for displayed orders;

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Schedule of Fees and Rebates on March 29, 2019 (SR–NYSENAT–2019–06). SR–NYSE–2019–06 [sic] was subsequently withdrawn and replaced by this filing.

[5] The Adding Tier 1 volumes are currently waived. *See* footnote * in the current Schedule of Fees and Rebates.

• $0.0018 per share for orders that set a new Exchange BBO;
• $0.0022 per share for non-displayed orders; and
• $0.0005 per share for MPL orders.

The Exchange proposes to retain the current fee structure for Tape B and Tape C securities and introduce new fees for Tape A securities.

For transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the ETP Holder has at least 0.015% of Adding ADV as a percent of CADV, the proposed fees would be as follows:
• $0.0020 per share for displayed orders in Tapes B and C securities and $0.0022 per share for displayed orders in Tape A securities;
• $0.0018 per share for orders that set a new Exchange BBO in Tapes B and C securities and $0.0020 per share in Tape A securities;
• $0.0022 per share for non-displayed orders in Tapes B and C securities and $0.0024 per share for non-displayed orders in Tape A securities; and
• $0.0005 per share for MPL orders, which would remain unchanged.

Adding Tier 2

Under current Adding Tier 2, the Exchange offers the following fees for transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the ETP Holder quotes: (i) At least 5% of the NBBO [6] in 1,000 or more symbols on an average daily basis, calculated monthly, and 0.20% or more Adding ADV as a percentage of US CADV, or (ii) at least 5% of the NBBO in 2,500 or more symbols on an average daily basis, calculated monthly, and 0.10% or more Adding ADV as a % of US CADV:
• $0.0005 per share for adding displayed orders;
• $0.0005 per share for orders that set a new Exchange BBO;
• $0.0007 per share for adding non-displayed orders; and
• $0.0005 per share for MPL orders.

The Exchange proposes to retain the current fee structure for Tape B and Tape C securities and introduce new fees for Tape A securities.

For transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the ETP Holder quotes: (i) At least 5% of the NBBO in 1,000 or more symbols on an average daily basis, calculated monthly, and 0.20% or more Adding ADV as a percentage of US CADV, or (ii) at least 5% of the NBBO in 2,500 or more symbols on an average daily basis, calculated monthly, and 0.10% or more Adding ADV as a % of US CADV, the proposed fees would be as follows:
• $0.0005 per share for adding displayed orders in Tape B and C securities and $0.0008 per share in Tape A securities;
• $0.0005 per share for orders that set a new Exchange BBO in Tape B and C securities and $0.0008 per share in Tape A securities;
• $0.0007 per share for adding non-displayed orders in Tape B and C securities and $0.0010 per share in Tape A securities; and
• $0.0005 per share for MPL orders, which would remain unchanged.

Adding Tier 3

Under current Adding Tier 3, the Exchange offers the following fees for transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the ETP Holder quotes at least 5% of the NBBO in 2000 or more symbols on an average daily basis, calculated monthly, and executes 0.10% or more Adding ADV as a percentage of US CADV:
• $0.0009 per share for adding displayed orders;
• $0.0009 per share for orders that set a new Exchange BBO;
• $0.0011 per share for adding non-displayed orders; and
• $0.0005 per share for MPL orders.

The Exchange proposes to retain the current fee structure for Tape B and Tape C securities and introduce new fees for Tape A securities.

For transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the ETP Holder quotes at least 5% of the NBBO in 2000 or more symbols on an average daily basis, calculated monthly, and executes 0.10% or more Adding ADV as a percentage of US CADV, the proposed fees would be as follows:
• $0.0009 per share for adding displayed orders in Tape B and C securities and $0.0012 per share in Tape A securities;
• $0.0009 per share for orders that set a new Exchange BBO in Tape B and C securities and $0.0012 per share in Tape A securities;
• $0.0011 per share for adding non-displayed orders in Tape B and C securities and $0.0014 per share in Tape A securities; and
• $0.0005 per share for MPL orders, which would remain unchanged.

Adding Tier 4

Under current Adding Tier 4, the Exchange offers the following fees for transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the ETP Holder quotes at least 5% of the NBBO in 600 or more symbols on an average daily basis, calculated monthly:
• $0.0012 per share for adding displayed orders;
• $0.0012 per share for orders that set a new Exchange BBO;
• $0.0014 per share for adding non-displayed orders; and
• $0.0005 per share for MPL orders.

The Exchange proposes to retain the current fee structure for Tape B and Tape C securities and introduce new fees for Tape A securities.

For transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the ETP Holder quotes at least 5% of the NBBO in 600 or more symbols on an average daily basis, calculated monthly, the proposed fees would be as follows:
• $0.0012 per share for adding displayed orders in Tape B and C securities and $0.0014 per share in Tape A securities;
• $0.0012 per share for orders that set a new Exchange BBO in Tape B and C securities and $0.0014 per share in Tape A securities;
• $0.0014 per share for adding non-displayed orders in Tape B and C securities and $0.0016 per share in Tape A securities; and
• $0.0005 per share for MPL orders, which would remain unchanged.

Step Up Adding Tier

Under the current Step [sic] Adding Tier, the Exchange offers the following fees for transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the ETP Holder has 0.04% or more of Adding ADV as a percent of US CADV over the ETP Holder's Adding ADV as a % of US CADV in November 2018:
• $0.0015 per share for adding displayed orders;
• $0.0015 per share for orders that set a new Exchange BBO3 [sic];
• $0.0017 per share for adding non-displayed orders; and
• $0.0005 per share for MPL orders.

The Exchange proposes to retain the current fee structure for Tape B and Tape C securities and introduce new fees for Tape A securities.

For transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the ETP Holder has 0.04% or more of Adding ADV as a percent of US CADV over the ETP Holder's Adding ADV as a % of US CADV in November 2018 the proposed fees would be as follows:
• $0.0015 per share for adding displayed orders in Tape B and C securities and $0.0018 per share in Tape A securities;

[6] *See* footnote ** in the current Schedule of Fees and Rebates.

• $0.0015 per share for orders that set a new Exchange BBO in Tape B and C securities and $0.0018 per share in Tape A securities;
• $0.0017 per share for adding non-displayed orders in Tape B and C securities and $0.0020 per share in Tape A securities; and
• $0.0005 per share for MPL orders, which would remain unchanged.

Proposed Changes to Taking Tiers

Under the current Taking Tier, the Exchange offers the following credits for transactions in stocks with a per share price of $1.00 or more when removing liquidity from the Exchange if the ETP Holder has at least 50,000 shares of Adding ADV:
• ($0.0020) per share for orders; and
• ($0.0002) per share for MPL orders.

The Exchange proposes to replace the current Taking Tier with three Taking Tiers, as follows.

Proposed Taking Tier 1 would offer the same credits as the current Taking Tier—($0.0020) per share for orders and ($0.0002) per share for MPL orders—for transactions in stocks with a per share price of $1.00 or more when removing liquidity from the Exchange if the ETP Holder has at least:
• 0.025% Adding ADV as a percentage of US CADV; or
• 0.0125% Adding ADV as a percentage of US CADV and 0.032% removing ADV as a percentage of US CADV; or
• 0.00125% Adding ADV as a percentage of US CADV and 0.25% removing ADV as a percentage of US CADV.

Under proposed Taking Tier 2, the Exchange would offer the following credits for transactions in stocks with a per share price of $1.00 or more when removing liquidity from the Exchange if the ETP Holder has at least 0.0125% Adding ADV as a percentage of US CADV:
• ($0.0018) per share for orders; and
• ($0.0002) per share for MPL orders, which would remain unchanged.

Finally, under proposed Taking Tier 3, the Exchange would offer the following credits for transactions in stocks with a per share price of $1.00 or more when removing liquidity from the Exchange if the ETP Holder has at least 50,000 shares of Adding ADV:
• ($0.0010) per share for orders; and
• ($0.0002) per share for MPL orders, which would remain unchanged.

As previously noted, an ETP Holder that meets the requirements of either proposed Taking Tiers 1, 2 or 3 would be eligible for the relevant rate and would not be charged the proposed fee of $0.0005 per share for removing liquidity. For example, an ETP Holder with at least 0.0125% Adding ADV as a % of US CADV in a given month would receive a credit of ($0.0018) per share for removing liquidity from the Exchange under proposed Taking Tier 2 and would not pay the proposed fee of $0.0005 per share for removing liquidity discussed above.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Liquidity Removing Fees

The Exchange believes that charging $0.0005 per share for removing liquidity from the Exchange will incentivize submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. Specifically, the Exchange believes that introducing a charge for removing liquidity would incentivize ETP Holders to send additional liquidity to the Exchange in order to receive a higher credit and avoid the proposed fee by meeting the higher liquidity requirements for a Taking Tier credit.

The Exchange also believes that the proposed fee is equitable because it would apply to all similarly situated ETP Holders. The proposed fee also is equitable and not unfairly discriminatory because it would be consistent with the applicable rate on other marketplaces. For example, Investors Exchange charges a Standard Match Fee of $0.0009 and a Reduced Match Fee of $0.0003.[9]

Proposed Changes to Adding Tiers

The Exchange believes that the proposed changes to the tiered adding requirements for displayed and non-displayed orders in Tape A, Tape B and Tape C securities priced at or above $1.00 are reasonable, equitable and not unfairly discriminatory, as follows.

The proposed Adding Tier 1, Adding Tier 2, Adding Tier 3, Adding Tier 4 and Step Up Adding Tier fees for adding liquidity in Tape B and C securities and the proposed Adding Tier 1, Adding Tier 2, Adding Tier 3, Adding Tier 4 and Step Up Adding Tier fees for Tape A securities for ETP Holders meeting the current requirements for each tier, which the Exchange does not propose to change, are reasonable because the proposed rates would contribute to incent ETP Holders to provide increased liquidity on the Exchange. Specifically, the proposed rates for Tapes B and C, which the Exchange does not propose to change, would continue to provide the same incentives to ETP Holders to provide liquidity to the Exchange on those tapes while the higher rates for Tape A would incentive ETP Holders to provide additional liquidity on the Exchange in Tape A securities, both of which benefit all ETP Holders. The proposed fees in Tape A securities are also equitable and not unfairly discriminatory because those fees would be consistent with or lower than the applicable rate on other marketplaces that charge for adding liquidity. For example, Cboe BYX charges a standard fee of $0.0019 per share, and their lowest fee for adding is $0.0012.[10]

In addition, the Exchange believes that the proposed Adding Tier 1, Adding Tier 2, Adding Tier 3, Adding Tier 4 and Step Up Adding Tier fees for adding liquidity in Tape B and C securities and the proposed Adding Tier 1, Adding Tier 2, Adding Tier 3, Adding Tier 4 and Step Up Adding Tier fees for Tape A securities fees are equitable and not unfairly discriminatory as all similarly situated market participants will be subject to the same fees on an equal and non-discriminatory basis.

Proposed Changes to Taking Tiers

The Exchange believes that the proposed replacement of the current Taking Tier with three taking tiers for orders that remove liquidity in securities priced at or above $1.00 are reasonable, equitable and not unfairly discriminatory, as follows.

The proposed Taking Tier 1 credits of ($0.0020) per share for orders that remove liquidity and ($0.0002) per share for MPL for ETP Holders with at least (1) 0.025% Adding ADV as a percentage of US CADV, or (2) 0.0125% Adding ADV as a percentage of US

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) & (5).

[9] *See* Investors Exchange Fee Schedule, available at *https://iextrading.com/trading/fees/*.

[10] *See* Cboe BYX U.S. Equities Exchange Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/byx/*.

CADV and 0.032% removing ADV as a percentage of US CADV, or (3) 0.00125% Adding ADV as a percentage of US CADV and 0.25% removing ADV as a percentage of US CADV; the proposed Taking Tier 2 credits of ($0.0018) per share and ($0.0002) per share for MPL for ETP Holders with at least 0.0125% Adding ADV as a % of US CADV; and (3) the proposed Taking Tier 3 credits of ($0.0010) per share and ($.0002) per share for ETP Holders with at least 50,000 Adding ADV in securities with a per share price of $1.00 or more when removing liquidity from the Exchange is reasonable, equitable and not unfairly discriminatory because the proposed fees are in line with the fees for removing liquidity on other exchanges.[11] For example, Cboe BYX offers tiered credits of ($0.0015), ($0.0016), and ($0.0017) per share.[12] The Exchange notes that the ($0.0002) per share credit for taking MPL is unchanged from the current Taking Tier.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[13] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[14] of the Act and subparagraph (f)(2) of Rule 19b–4[15] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSENAT–2019–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2019–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2019–09 and should be submitted on or before May 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

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[11] *See* CBOE BYX Exchange Fee Schedule at *https://markets.cboe.com/us/equities/membership/fee_schedule/byx/*.

[12] *See* Cboe BYX U.S. Equities Exchange Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/byx/*.

[13] 15 U.S.C. 78f(b)(8).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85671; File No. SR–MRX–2019–08]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing of a Proposed Rule Change To Adopt Complex Order Functionality

April 17, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 12, 2019, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Complex Order Functionality.[3] The proposed amendments to adopt Complex Order Functionality are identical to corresponding Nasdaq ISE, LLC (''ISE'') Rules.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] MRX proposes to amend the Complex Order functionality within Rules 100(a)(54) and (54A); 702, 710, 714, 715, 716, 718, 720, 721, 722, 723, and 724 (collectively ''Complex Order Functionality'').

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to introduce Complex Order Functionality on MRX that is identical to the Complex Order Functionality offered today on ISE. The Exchange specifically proposes to: (1) Adopt a new Rule 722, titled ''Complex Orders'' to describe the functionality; (2) amend the definition of Professional Order within Section 100 (a)(54) to account for Complex Orders and add a definition for Professional Customer within Section 100 (a)(54A); (3) amend Rule 702, ''Trading Halts,'' to account for Complex Orders; (4) amend Rule 710, ''Minimum Trading Increments,'' to account for Complex Orders; (5) amend Rule 714, ''Automatic Execution of Orders'' to note a limitation with respect to the Anti-Internalization protection; (6) amend Rule 715, ''Order Types,'' to define two new order types, ''legging orders'' and ''QCC with Stock Orders,'' and amend the Ouch to Trade Options and Specialized Quote Feed protocols; (7) amend the title of Rule 716 from ''Block Trades'' to ''Auction Mechanisms'' and introduce a new Complex Facilitation Mechanism and Complex Solicited Order Mechanism; (8) adopt a new Nasdaq MRX Spread Feed within Rule 718(a)(5); (9) amend Rule 720, ''Nullification and Adjustment of Options Transactions including Obvious Errors'' to account for Complex Orders; (10) amend Rule 721, ''Crossing Orders,'' to adopt new Complex Customer Cross Orders, Complex Qualified Contingent Cross Orders, Qualified Contingent Cross Orders with Stock and Complex Qualified Contingent Cross with Stock Orders; (11) amend Rule 723 to adopt a new Complex Price Improvement Mechanism; (12) adopt new Rule 724, entitled ''Complex Order Risk Protections'' to adopt various Complex Order risk protections; (13) amend the Pricing Schedule within Options 7, Sections 6 and 7 to reflect the new MRX data feed at no cost; and (14) and other universal changes. Each change will be discussed below in detail.

Universal Changes

In addition to the amendments described below, the Exchange proposes to make several changes throughout its rules. In particular, the Exchange proposes to capitalize references to ''member'' to reflect the defined term ''Member'' [4] and capitalize references to ''system'' to reflect the defined term ''System.'' [5] Finally, cross-references to rule numbers will be updated where appropriate.

Rule 722

The Exchange proposes to adopt a new Rule 722, titled ''Complex Orders.'' This proposed new rule will: (1) Define various terms related to Complex Orders; (2) indicate the types of Complex Orders that may be entered into the System; (3) describe the applicability of various rules (*e.g.,* minimum increments, complex strategies and rules regarding internalization); (4) describe the manner in which complex strategies are executed; (5) describe complex exposure; (6) describe the manner in which Stock Option and Stock-Complex Orders will be handled; (7) describe Trade Value Allowance; (8) describe various aspects of the Complex Opening Process; and (9) describe the trading of Qualified Contingent Cross and Complex Qualified Contingent Cross Orders. Proposed MRX Rule 722 is identical to ISE Rule 722.

Complex Exposure

Proposed Supplementary Material .01 to MRX Rule 722 provides that Members may elect to have their Complex Orders that are marketable upon entry exposed for up to one second before those orders are automatically executed. Specifically, the proposed rule describes an auction process whereby Complex Orders that improve upon the best price for the same complex strategy on the Complex Order Book upon entry may be exposed for up to one second.[6]

Stock Option and Stock-Complex Orders

Proposed Supplementary Material .02 to MRX Rule 722 describes an automated process for the communication of stock-option orders by electronically transmitting the orders related to the stock leg(s) for execution on behalf of the parties to the trade.

[4] The term ''Member'' means an organization that has been approved to exercise trading rights associated with Exchange Rights. *See* Rule 100(a)(30).

[5] The term ''System'' means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions. *See* Rule 100(a)(63).

[6] A Complex Order improves upon the best price for the same complex strategy on the Complex Order Book if it is a Limit Order to buy priced higher than the best bid, a Limit Order to sell priced lower than the best offer, or a Market Order to buy or sell.

Trade Value Allowance

Proposed Supplementary Material .03 to MRX Rule 722 describes the manner in which Stock-Option Strategies and Stock Complex Strategies would be handled when different minimum trading increments are allowed for the stock and options legs of such trades.

Complex Opening Process

A Complex Opening Process is proposed at Supplementary Material .04 to MRX Rule 722. The rule provides that after each of the individual component legs have opened, or reopened following a trading halt, Complex Options Strategies would be opened pursuant to the Complex Opening Price Determination described in proposed Supplementary Material .05 to MRX Rule 722, and Stock-Option Strategies and Stock-Complex Strategies will be opened pursuant to the Complex Uncrossing Process described in proposed Supplementary Material .06(b) to MRX Rule 722.[7]

Complex Options Strategies are opened pursuant to an Opening Process that attempts to execute Complex Orders on the Complex Order Book at a single price that is within Boundary Prices that are constrained by the NBBO for the individual legs, thereby serving an important price discovery function.

Proposed Supplementary Material .06(b) to Rule 722 describes the Exchange's process for uncrossing the Complex Order Book when a resting Complex Order that is locked or crossed with other interest becomes executable during regular trading or as part of the Complex Opening Process. The Complex Uncrossing Process applies to Complex Options Strategies, Stock-Option Strategies, and Stock-Complex Strategies.

Minimum Increments

The Exchange proposes to amend MRX Rule 710, ''Minimum Increments,'' to provide the increments for trading in complex strategies. Additionally, the Exchange proposes a minor technical amendment to spell out ''one cent.'' Proposed MRX Rule 710 is identical to ISE Rule 710.

Auction Mechanisms

Block Order Mechanism

The Exchange proposes to retitle MRX Rule 716, currently titled ''Block Trades,'' as ''Auction Mechanisms,'' because the new title more accurately describes the rule text contained in this rule. The Exchange proposes to relocate the text of Rule 716(a) within current Rule 716(c) and re-letter that Rule as 716(a). The Exchange also proposes to make clear that the Block Order Mechanism applies only to single-leg transactions and therefore does not apply to Complex Orders. The Exchange proposes to remove the ''(b)'' from Rule 716 so that the following text will apply to the entirety of Rule 716 and all mechanisms within the rule, including proposed relocated text, ''For purposes of this Rule, a ''broadcast message'' means an electronic message that is sent by the Exchange to all Members, and a ''Response'' means an electronic message that is sent by Members in response to a broadcast message.'' This rule text, as written, is being amended so that it is clear that the rule text applies to all mechanisms within this rule, including the Complex Facilitation and Solicited Order Mechanisms which are proposed to be added in Rule 716(b) and (e), respectively, as proposed below. In addition, the Exchange proposes to relocate and expand rule text within Supplementary Material .04 to Rule 716[8] to this introductory paragraph so that with the relocation it also will apply to the entire rule. The Exchange proposes to provide, ''Also for purposes of this rule, the time given to Members to enter Responses for any of the below auction mechanisms shall be designated by the Exchange via circular, but no less than 100 milliseconds and no more than 1 second.'' Today, this rule text applies to all mechanisms within the rule, the Block Order Mechanism, Facilitation Mechanism and Solicited Order Mechanisms. As amended, the rule text will apply to the proposed Complex Facilitation and Solicited Order Mechanisms as well. Proposed MRX Rule 716(a) and (b) are identical to ISE Rule 716(a) and (b).

Complex Facilitation Mechanism

The Exchange proposes to amend MRX Rule 716 to re-letter the Facilitation Mechanism from ''(d)'' to ''(b).'' In addition, the Exchange proposes to adopt a new Complex Facilitation Mechanism in new MRX Rule 716(c). With this proposal, Electronic Access Members may use the Complex Facilitation Mechanism in new rule Rule 716(c) above to execute block-size Complex Orders at a net price. The Complex Facilitation Mechanism is a process by which an Electronic Access Member can execute a transaction wherein the Electronic Access Member seeks to facilitate a block-size Complex Order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size Complex Order it represents as agent. Proposed MRX Rule 716(c) is identical to ISE Rule 716(c).

Complex Solicited Order Mechanism

MRX proposes to adopt a new Complex Solicited Order Mechanism at proposed MRX Rule 716(e). The Complex Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute Complex Orders it represents as agent against contra orders that it solicited according to Rule 716(d). Proposed MRX Rule 716(e) is identical to ISE Rule 716(e). Additionally, the Exchange proposes to eliminate Supplementary Material .03, which is currently reserved, and .04 to Rule 716, which is being relocated as discussed above. The Exchange proposes to amend Supplementary Material .05[9] to Rule 716 to renumber it .03. The Exchange proposes to renumber Supplementary Material .06[10] to Rule 716 as .04. The Exchange proposes to eliminate references to Supplementary Material .07 and .08 to Rule 716, which are currently reserved. The Exchange proposes to renumber Supplementary Material .09[11] to Rule 716 as .07. As proposed to be amended, the entirety of the MRX Supplementary Material to Rule 716 will be identical to the entirety of the Supplementary Material of ISE Rule 716.

Concurrent Auctions

The Exchange proposes to adopt new MRX Rules 716(f) and (g) regarding the processing of concurrent auctions. The Exchange will not operate multiple concurrent auctions for a complex strategy. Specifically, proposed MRX Rule 716(f) provides that only one Exposure Auction, Complex Price Improvement Mechanism auction, Complex Facilitation Mechanism auction, or Complex Solicited Order

[7] The Complex Uncrossing Process is also used during regular trading when a resting Complex Order that is locked or crossed with other interest becomes executable.

[8] Supplementary Material .04 to Rule 716 provides, ''The time given to Members to enter Responses under paragraphs (c)(1), (d)(1) and (e)(1) shall be designated by the Exchange via circular, but no less than 100 milliseconds and no more than 1 second.''

[9] Supplementary .05 to Rule 716 prohibits Members from utilizing the Solicited Order Mechanism to circumvent MRX Rule 717(d) limiting principal transactions.

[10] Supplementary .06 to Rule 716 permits orders and responses entered into the Facilitation and Solicited Order Mechanisms to receive executions at the mid-price between the standard minimum trading increments for the option series (''Split Prices'').

[11] Supplementary Material .09 to Rule 716 allows orders and responses to be entered into the Block Mechanism and receive executions at penny increments.

Mechanism auction, pursuant to proposed Rule 722, Supplementary Material .01 or proposed Rule 723(e) or proposed Rule 716(c) and (e), respectively, will be ongoing at any given time in a Complex Strategy, and such auctions will not queue or overlap in any manner. Proposed MRX Rule 716(g) describes concurrent complex and single leg auctions. Proposed MRX Rule 716(f) and (g) are identical to ISE Rule 716(f) and (g).

Complex Price Improvement Mechanism

The Exchange proposes to amend MRX Rule 723 to adopt a new Complex Price Improvement Mechanism at proposed MRX Rule 723(e). The Price Improvement Mechanism exposes paired orders to all Members for a specified period of time [12] to provide an opportunity for price improvement. The Exchange proposes to make the Price Improvement Mechanism available for the execution of Complex Orders. Proposed MRX Rule 723(e) is identical to ISE Rule 723(e).

Complex Customer Cross Order

The Exchange proposes to amend MRX Rule 721, Crossing Orders. The Exchange proposes to add a title within Rule 721(a), ''Customer Cross Orders.'' This will distinguish this paragraph from new proposed Rule 721(b), titled ''Complex Customer Cross Order.'' The Exchange proposes to adopt a new Customer Complex Cross Orders at proposed MRX Rule 721(b). With this proposal, Complex Orders may be entered as Customer Cross Orders, which are currently defined in MRX Rule 715(i). MRX Rule 721(a), as proposed to be amended, and proposed MRX Rule 721(b) are identical to ISE Rules 721(a) and (d) respectively.

Complex Qualified Contingent Cross Orders

The Exchange proposes to re-letter MRX 721(b) as 721(c) and to add a title ''Qualified Contingent Cross Orders'' to the rule. The Exchange proposes to adopt a new Complex Qualified Contingent Cross Orders (''Complex QCC'') at proposed MRX Rule 721(d). Proposed MRX Rule 721(d) describes Complex QCC Orders which are automatically executed upon entry as long as certain conditions are satisfied. Pursuant to current Rule 715(j), Qualified Contingent Cross Orders are orders to buy or sell at least 1,000 contracts that are identified as being part of a qualified contingent trade, as that term is defined in Supplementary Material .01 to MRX Rule 715.[13] Proposed MRX Rule 721(c), as proposed to be amended, and proposed Rule 721(d) are identical to ISE Rules 721(c) and (d) respectively.

Qualified Contingent Cross With Stock

The Exchange proposes to adopt Qualified Contingent Cross (''QCC'') Orders with Stock at proposed MRX Rule 721(e). The proposal adopts a definition of QCC with Stock Orders.[14] The proposed definition is identical to ISE Rule 722(b)(15). The proposed QCC with Stock Order facilitates the execution of the stock component of qualified contingent trades.[15] The Exchange proposes to adopt rule text at proposed MRX Rule 721(e) to provide detail explaining how a QCC with Stock Order is processed. Proposed MRX Rule 721(e) is identical to ISE Rule 721(e). Additionally, the Exchange proposes to define QCC with Stock within proposed new Rule 715(t). This defined term is identical to ISE Rule 715(t). Finally, the Exchange proposes to re-letter the definition of Opening Sweep as 715(u), as proposed this amendment will make the rule identical to ISE Rule 715(u).

Complex Order Risk Protections

The Exchange proposes to adopt Complex Order Protections at proposed MRX Rule 724. Proposed MRX Rule 724 is identical to ISE Rule 724. The Complex Order Protections include: Price limits, Vertical Spread Protections, Calendar Spread Protections, Butterfly Spread Protections, Box Spread Protections, Limit Order Spread Protections, Size Limitation and Price Level Protection.

Price Limits

The Exchange proposes to adopt a Price Limits protection at proposed MRX Rule 724(a). This protection will prevent the legs of a complex strategy from trading through the NBBO for the series or any stock component by a configurable amount calculated as the lesser of (i) an absolute amount not to exceed $0.10, and (ii) a percentage of the NBBO not to exceed 500%, as determined by the Exchange on a class, series, or underlying basis.

Vertical Spread Protections

The Exchange proposes to adopt a Vertical Spread Protection at proposed MRX Rule 724(b)(1). Pursuant to this proposal, a Vertical Spread is an order to buy a call (put) option and to sell another call (put) option in the same security with the same expiration but at a higher (lower) strike price at proposed Rule 724(b)(1). The System will reject Vertical Spread orders when entered with a net price of less than zero (minus a pre-set value) and will prevent the execution of a Vertical Spread order at a price that is less than zero (minus a pre-set value) when entered as a market order to sell. The System will also reject a Vertical Spread order or quote when entered with a net price greater than the value of the higher strike price minus the lower strike price (plus a pre-set value), and will prevent the execution of a Vertical Spread order at a price that is greater than the value of the higher strike price minus the lower strike price (plus a pre-set value) when entered as a Market Order to buy.

Calendar Spread Protections

The Exchange proposes to adopt a Calendar Spread Protection at proposed MRX Rule 724(b)(2). Pursuant to this proposal, a Calendar Spread is an order to buy a call (put) option with a longer expiration and to sell another call (put) option with a shorter expiration in the same security at the same strike price at proposed Rule 724(b)(2). The System will reject a Calendar Spread order when entered with a net price of less than zero (minus a pre-set value), and will prevent the execution of a Calendar

[12] The exposure period shall be no less than 100 milliseconds and no more than 1 second. *See* MRX Rule 723(c).

[13] Pursuant to current Rule 715(j), Qualified Contingent Cross Orders are orders to buy or sell at least 1,000 contracts that are identified as being part of a qualified contingent trade, as that term is defined in Supplementary Material .01 to Rule 715. The definition of Qualified Contingent Cross trade is substantively identical to the Commission's definition of a Qualified Contingent Transaction (''QCT'') for which the Commission, by order, has provided trade-through relief in the equities market. Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (the ''QCT Release''). Pursuant to Supplementary Material .01 to Rule 715, a Qualified Contingent Cross trade must meet the following conditions: (i) At least one component must be an NMS Stock; (ii) all the components must be effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (iii) the execution of one component must be contingent upon the execution of all other components at or near the same time; (iv) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) must be determined by the time the contingent order is placed; (v) the component orders must bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (iv) the transaction must be fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade. Consistent with the QCT Release members must demonstrate that the transaction is fully hedged using reasonable risk-valuation methodologies.

[14] *See also* proposed Rule 722(b)(15).

[15] *See* Securities Exchange Act Release No. 80090 (February 22, 2017), 82 FR 12150 (February 28, 2017) (SR–ISE–2017–12) (''QCC with Stock Notice'').

Spread order at a price that is less than zero (minus a pre-set value) when entered as a market order to sell.

Butterfly and Box Spread Protections

The Exchange proposes to adopt a Butterfly Spread Protection at proposed MRX Rule 724(b)(3) and a Box Spread Protection at proposed Rule 724(b)(4). Pursuant to this proposal, a Butterfly spread is a three legged Complex Order with certain characteristics.[16] Pursuant to this proposal, a Box spread is a four legged Complex Order with certain characteristics.[17] Butterfly and Box Spreads will be rejected outside of certain parameters to avoid potential executions at prices that exceed the minimum and maximum possible intrinsic value of the spread by a specified amount.

Limit Order Price Protection

MRX proposes to adopt a Limit Order Price Protection at MRX Rule 724(c)(1). This protection will limit the amount by which the net price of an incoming Limit Complex Order to buy may exceed the net price available from the individual options series on the Exchange and the national best bid or offer for any stock leg, and by which the net price of an incoming Limit Complex Order to sell may be below the net price available from the individual options series on the Exchange and the national best bid or offer for any stock leg. Limit Complex Orders that exceed the pricing limit will be rejected.

Size Limitation

MRX proposes to adopt a Size Limitation protection at proposed MRX Rule 724(c)(2) the same as provided for in ISE Rule 724(c)(2). This protection will limit the number of contracts (and shares in the case of a Stock-Option Strategy or Stock-Complex Strategy) any single leg of an incoming Complex Order may specify. Orders or quotes that exceed the maximum number of contracts (or shares) will be rejected.

Price Level Protection

MRX proposes to adopt a Price Level Protection at proposed MRX Rule 724(c)(3). Pursuant to this proposal, the Price Level Protection will limit the number of price levels at which an incoming Complex Order to sell (buy) will be executed automatically with the bids or offers of each component leg when there are no bids (offers) from other exchanges at any price for the options series. Complex Orders will be executed at each successive price level until the maximum number of price levels is reached. On any component leg where the maximum number of price levels has been reached, the protection will be triggered and any balance will be canceled.

Professional Definition

The Exchange proposes to amend the definition of Professional Orders within Rule 100(a)(54). Proposed MRX Rule 100(a)(54) is identical to ISE Rule 1(a)(54). Specifically, the Exchange proposes to amend the calculation of Professional Orders to include rule text indicating the manner in which Complex Orders should be counted. With this proposal, a cancel and replace order which replaces a prior order shall be counted as a second order, or multiple new orders in the case of Complex Order comprising 9 options legs or more. Additionally, Complex Orders consisting of 8 legs or fewer will be counted as a single order, and respecting Complex Orders of 9 options[18] legs or more, each leg will count as a separate order. Stock orders shall not count toward the number of legs.

Trading Halts

The Exchange proposes to amend MRX Rule 702(d)(2) to describe how Market Complex Orders, which are proposed within proposed MRX Rule 722, will be handled during a trading halt. Proposed MRX Rule 702 is identical to ISE Rule 702.

Automatic Execution of Orders

The Exchange proposes to amend MRX Rule 714, ''Automatic Execution of Orders,'' which lists the various single-legged risk protections available to Members. The Exchange proposes to exclude Complex Orders from the Anti-Internalization[19] protection. The Exchange currently provides that Anti-Internalization does not apply in any auction and proposes to also state that Anti-Internalization functionality shall not apply with respect to Complex Order transactions. Proposed MRX Rule 714(b)(3)(A) is identical to ISE Rule 714(b)(3)(A).

Types of Orders

The Exchange is proposing to amend MRX Rule 715 to define legging orders within Rule 715(k) and QCC with Stock at proposed Rule 715(t). Proposed MRX Rule 715(k) and (t) are identical to ISE Rule 715(k) and (t). Additionally, the Exchange proposes to re-letter ''Opening Sweep'' as ''u'' and capitalize the term ''System'' which is defined. These proposed changes will make the rule text in MRX Rule 715 identical to ISE Rule 715.

The Exchange proposes to amend the MRX Supplementary Material .03 to Rule 715 to indicate both ''Ouch to Trade Options'' or ''OTTO'' and the ''Specialized Quote Feed'' or ''SQF'' protocols may connect, send and receive message related to complex instruments. Proposed MRX Supplementary Material .03(b) and (c) to Rule 715 are identical to Supplementary Material .03(b) and (c) to ISE Rule 715.

Data Feeds and Trade Information

The Exchange proposes to adopt a MRX Spread Feed at proposed MRX Rule 718(a)(5) at no cost as noted in proposed Options 7, Section 6(iii)(5). The Spread Feed contains various information regarding Complex Orders. Proposed MRX Rule 718(a)(5) is identical to ISE Rule 718(a)(5). Additionally, the Exchange purposes to define the term ''Professional Customer'' at proposed MRX Rule 100(a)(54A). The MRX Spread Feed introduces this term, which exists within ISE Rule 100(a)(54A). Proposed MRX Rule 100(a)(54A) is identical to ISE Rule 100(a)(54A).

Nullification and Adjustment of Options Transactions Including Obvious Errors

The Exchange proposes to amend MRX Rule 720, titled ''Nullification and Adjustment of Options Transactions including Obvious Errors'' which permits the Exchange to nullify a transaction or adjust the execution price of a transaction for Complex Orders. Additionally, the Exchange proposes to renumber current Supplementary Material .04 to .06 within Rule 720. Proposed MRX Rule 720 is identical to ISE Rule 720 including the Supplementary Material.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'')[20] in general, and furthers the objectives of Section 6(b)(5) of the Act[21] in particular, in that it is designed

[16] This strategy will utilize a combination of either all calls or all puts of the same expiration date in the same underlying to limit risk.

[17] This strategy utilizes a combination of put/call pairs of options with the same expiration date in the same underlying to limit risk.

[18] Orders that have nine legs, where one leg is a stock, will be considered one order. Stock orders shall not count toward the number of legs.

[19] Anti-Internalization prevents quotes and orders entered by Market Makers from executing against quotes and orders entered on the opposite side of the market by the same Market Maker using the same Market Maker identifiers, or alternatively, if selected by the Member, the same Exchange account number or member firm identifier.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. MRX's adoption of Complex Order Functionality will allow MRX to compete with other options exchanges that offer complex functionality.[22] The Exchange believes that the proposed rule change will better enable Members and investors to make informed decisions regarding the use of Complex Orders on the Exchange. As described more fully above, MRX's Complex Order Functionality is identical to the Complex Order Functionality offered today on ISE.[23]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes that offering Complex Order Functionality on MRX will enhance competition among the various markets for Complex Order execution, potentially resulting in more active Complex Order trading on all exchanges. The Exchange does not believe its proposal to offer Complex Order Functionality will create an undue burden on inter-market competition as various other options markets offer Complex Order functionality.[24]

With respect to intra-market competition, all Members are permitted to submit Complex Orders into MRX. Further, the Exchange will uniformly apply the proposed rules to any Member that submits a Complex Order into MRX.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[22] *See* NYSE American LLC Rule 971.2NY, ISE Rule 722, Phlx Rule 1098, Cboe Interpretations and Policies .01 to Cboe Rule 6.41 and MIAX Rule 518.

[23] *See* note 3 above.

[24] *See* note 22 above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MRX–2019–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2019–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2019–08 and should be submitted on or before May 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–08103 Filed 4–22–19; 8:45 am]

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[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85678; File No. SR–BOX–2019–11]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC ("BOX") Facility To Modify Its Strategy QOO Order Fee Cap and Rebate

April 17, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 4, 2019, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule to amend

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

the Fee Schedule [sic] on the BOX Options Market LLC (''BOX'') options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 1, 2019. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX to amend Section II.D (Strategy QOO Order Fee Cap and Rebate). Currently, the Exchange caps fees and offers rebates on all short stock interest, reversal, conversion, jelly roll, and box spread strategies on the BOX Trading Floor. The Exchange is now proposing to cap fees and offer a Floor Broker rebate for dividend strategy transactions.

A dividend strategy is defined as a transaction done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. The Exchange proposes to include this definition in a footnote in the BOX Fee Schedule in Section II.D.

The Exchange now proposes to offer a strategy cap for dividend strategies. Today, Floor Participant transactions are capped at $1,000 for all short stock interest, reversal, conversion, jelly roll, and box spread strategies executed on the same trading day.[5] The Exchange proposes to include dividend strategies in the daily Strategy QOO Order Fee Cap and Rebate. As such, Floor Participant transactions will also be capped at $1,000 for all dividend strategies executed on the same trading day in the same options class. The Exchange notes that the proposed fee cap is similar to a fee cap at another options exchange in the industry.[6]

Further, the Exchange proposes to include dividend strategies in the Floor Broker Strategy QOO Rebate. As proposed, on each trading day, Floor Brokers are eligible to receive a $500 rebate for presenting certain Strategy QOO Orders on the Trading Floor. The rebate will be applied once the $1,000 fee cap is met for dividend strategies executed on the same trading day in the same options class.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that including dividend strategies in Section II.D of the BOX Fee Schedule is reasonable, as another exchange offers fee caps for dividend strategies.[8] On Phlx, Specialist, Market Makers, Professionals, Firms and Broker-Dealers receive a fee cap of $1,500 for a [sic] dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary account. The Exchange also notes that the Phlx fee cap is broader in that it applies to dividend, merger and short stock interest strategies collectively. As discussed herein, the Exchange proposes a separate cap for dividend strategies. The Exchange believes this difference is appropriate as dividend strategies must execute in the same options class where the other strategies in the BOX Fee Schedule are not subject to the same requirement. As such, the Exchange believes it is reasonable and appropriate to separate dividend strategies from the other strategies in the BOX Fee Schedule. Further, the Exchange believes that including dividend strategies in the Strategy QOO Order rebate is appropriate as Floor Brokers are eligible to receive a $500 rebate for presenting all other strategies to the BOX Trading Floor.

The Exchange believes the proposed fee cap for dividend strategies is equitable and not unfairly discriminatory because it provides incentives for all Participants to submit these types of strategy orders to the BOX Trading Floor, which brings increased liquidity and order flow to the floor for the benefit of all market participants. Further, the Exchange believes that including dividend strategies in the Strategy QOO Order rebate is equitable and not unfairly discriminatory as the rebate is available to all Floor Brokers who submit such orders to the BOX Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies uniformly to all Participants that incur transaction fees for dividend strategies. Further, another options exchange today offers a cap on dividend strategies; therefore, the Exchange believes that the proposal is consistent with robust competition and does not provide any unnecessary burden on competition. Further, because Floor Participants pay Floor Brokers to execute trades on the Exchange Floor, the Exchange believes that offering fee caps on dividend strategies to Participants executing floor transactions and not electronic executions does not create an unnecessary burden on competition because the fee cap defrays brokerage costs associated with executing dividend strategy transactions, similar to other strategies today.

The Exchange operates in a highly competitive market in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fee cap and Floor Broker rebate for dividend strategies proposed by the Exchange, as described in the proposal, are influenced by these robust market forces

[5] Short stock interest, reversal, conversion, jelly roll and box spread transactions are not included in the monthly fee cap for Broker Dealers. The Exchange notes that dividend strategies will not be included in the monthly fee cap for Broker Dealers.

[6] *See* Nasdaq Phlx LLC (''Phlx'') Fee Schedule. On Phlx, Specialist, Market Makers, Professionals, Firms and Broker-Dealers receive a fee cap of $1,500 for a [sic] dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary account.

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *See supra* note 6. The Exchange notes that it is not including the Phlx requirement that the Participant be trading in their own proprietary account as this is not the BOX strategy fee cap model and is not a requirement for the other strategies on the BOX Fee Schedule.

and therefore must remain competitive with fee caps at other venues and therefore must continue to be reasonable and equitably allocated to those Participants that opt to direct orders to the Exchange rather than competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2019–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2019–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2019–11, and should be submitted on or before May 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–08106 Filed 4–22–19; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85669; File No. SR–Phlx–2019–13]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period for the Exchange's Nonstandard Expirations Pilot Program

April 17, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2019, Nasdaq PHLX LLC (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period for the Exchange's nonstandard expirations pilot program, currently set to expire on May 6, 2019.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 15, 2017, the Commission approved a proposed rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates.[5] The pilot program permits both Weekly Expirations and End of Month (''EOM'') expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (approving SR–Phlx–2017–79) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 and Granting Accelerated Approval of Amendment No. 2, of a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

the index value derived from the closing prices of component stocks. The Exchange previously filed to extend the pilot through May 6, 2019.[6]

Pursuant to Phlx Rule 1101A(b)(5)(A) the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of- the- month or days that coincide with an EOM expiration). Weekly Expirations are be subject to all provisions of Exchange Rule 1101A and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Similarly, pursuant Rule 1101A(b)(5)(B) the Exchange may open for trading End of Month (''EOM'') on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOMs are subject to all provisions of Rule 1101A and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOMs are p.m.-settled.

The Exchange now proposes to amend Exchange Rule 1101A(b)(5)(C) so that the duration of the pilot program for these nonstandard expirations will be through November 4, 2019. The Exchange continues to have sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will make public on its website any data and analysis it submits to the Commission under the pilot program.

Finally, the Exchange proposes to amend Phlx Rule 1101A(b)(3)(d). The Exchange proposes to capitalize the ''d'' so the cite becomes Phlx Rule 1101A(b)(3)(D).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. By extending the pilot program, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the potential for adverse market effects of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Options with nonstandard expirations would be available for trading to all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that investors may continue to trade nonstandard expiration options listed by the Exchange as part of the pilot program on an uninterrupted basis. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2019–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

[6] *See* Securities Exchange Act Release No. 84835 (December 17, 2018), 83 FR 65773 (December 21, 2018) (approving SR–Phlx–2018–80) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pilot Period for the Exchange's Nonstandard Expirations Pilot Program).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–Phlx–2019–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2019–13 and should be submitted on or before May 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–08100 Filed 4–22–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85670; File No. SR–OCC–2019–801]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Related to the Options Clearing Corporation's Margin Methodology for Volatility Index Futures

April 17, 2019.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i)[2] under the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[3] notice is hereby given that on March 18, 2019, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') an advance notice (''Advance Notice'') as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is in connection with proposed changes to OCC's margin methodology for futures on indexes designed to measure volatilities implied by prices of options on a particular underlying interest (such indexes being ''Volatility Indexes,'' and futures contracts on such Volatility Indexes being ''Volatility Index Futures''). The proposed methodology enhancements for Volatility Index Futures would include: (1) Introducing ''synthetic'' futures (discussed below) into the daily re-estimation of prices and correlations for Volatility Index Futures; (2) an enhanced statistical distribution for modeling price returns of the ''synthetic'' futures; and (3) a new anti-procyclical floor for variance estimates. The proposed changes are discussed in detail in Section II below.

The proposed changes to OCC's Margins Methodology document are contained in confidential Exhibit 5 of the filing. Material proposed to be added is marked by underlining and material proposed to be deleted is marked by strikethrough text. OCC also has included backtesting and impact analysis of the proposed model changes in confidential Exhibit 3.

The advance notice is available on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp*. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A and B below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received. OCC will notify the Commission of any written comments received by OCC.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Description of the Proposed Change

The purpose of the proposed changes is to introduce enhancements to OCC's margin methodology for Volatility Index Futures so that OCC's margin model reflects more current market information for Volatility Index Futures and allows for more appropriate modeling of the risk attributes of such products. Specifically, the proposed methodology enhancements for Volatility Index Futures would include: (1) Introducing ''synthetic'' futures into the process for daily re-estimation of prices and correlations for Volatility Index Futures; (2) an enhanced statistical distribution for modeling price returns for ''synthetic'' futures; and (3) a new anti-procyclical floor for variance estimates. OCC's current model for Volatility Index Futures and the proposed changes thereto are described in further detail below.

Background

OCC's margin methodology, the System for Theoretical Analysis and Numerical Simulations (''STANS''),[5] is OCC's proprietary risk management system that calculates Clearing Member margin requirements. STANS utilizes large-scale Monte Carlo simulations to forecast price and volatility movements in determining a Clearing Member's margin requirement.[6] The STANS

[14] 17 CFR 200.30–3(a)(12).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp*.

[5] *See* Securities Exchange Act Release No. 53322 (February 15, 2006), 71 FR 9403 (February 23, 2006) (SR–OCC–2004–20).

[6] *See* OCC Rule 601.

margin requirement is calculated at the portfolio level of Clearing Member accounts with positions in marginable securities. The STANS margin requirement consists of an estimate of a 99% expected shortfall [7] over a two-day time horizon and an add-on margin charge for model risk (the concentration/dependence stress test charge).[8] The STANS methodology is used to measure the exposure of portfolios of options, futures and cash instruments, including the Volatility Index Futures cleared by OCC.[9]

Volatility Indexes are indexes designed to measure the volatility that is implied by the prices of options on a particular reference index or asset. For example, the Cboe Volatility Index (''VIX'') is an index designed to measure the 30-day expected volatility of the Standard & Poor's 500 index (''SPX'').[10] OCC currently clears futures contracts on such Volatility Indexes. These Volatility Index Futures contracts can consequently be viewed as an indication of the market's future expectations of the volatility of a given Volatility Index's underlying reference index (*e.g.,* in the case of the VIX, providing a snapshot of the expected market volatility of the underlying over the term of the options making up the index).

Current Model for Volatility Index Futures

Under OCC's existing margin methodology, OCC models the potential final settlement prices of Volatility Index Futures using the underlying index as the risk factor.[11] Final settlement prices are simulated under the assumption that the logarithm of the values of the risk factor (*i.e.,* the underlying spot Volatility Index) follows a mean-reverting [12] random walk [13] with normally-distributed steps.[14] The model is designed to calibrate the distribution that defines this mean-reversion behavior so that the expected final settlement prices of the futures match their currently-observed market prices to ensure that margin coverage is sufficient to limit credit exposures to OCC's participants under normal market conditions. OCC recalculates the Monte Carlo scenarios of the returns of each futures series over its remaining life so that the standard deviation of the scenarios matches two days' worth of the implied volatility of near-the-money and contemporaneously expiring options on the Volatility Index, where available, in order to align with OCC's two-day liquidation period assumption. Currently, the calibration for the distribution is performed on a daily basis.

OCC's current model for Volatility Index Futures, which utilizes the underlying Volatility Index as the sole risk factor, is subject to certain limitations, which would be addressed by the proposed changes described herein. Volatility Indexes, unlike futures contracts, are not investible (*i.e.,* they cannot be replicated by static portfolios of traded contracts). In addition, the futures market has a term structure that cannot be modeled using just the underlying index. Finally, futures on a Volatility Index are less volatile and less fat-tailed [15] than the index itself, and these features are term-dependent. The current model was developed before sufficient data on the futures was available, so a model based on ''synthetic'' futures,[16] as proposed herein, was not an option at the time. Also, the current model does not account for certain strategies Clearing Members might employ involving spreads between delivery dates, which may result in under-margining of those positions.

In recent years, OCC has seen significant growth in trading volume for Volatility Index Futures. As a result, OCC is proposing a number of enhancements to its margin methodology designed to provide for more accurate and responsive margin requirements for Volatility Index Futures.

Proposed Changes

The purpose of the proposed changes is to introduce enhancements to OCC's margin methodology so that OCC's margin models reflect more current market information for Volatility Index Futures, introduce asymmetry into the statistical distribution used to model price returns of the ''synthetic'' futures, and reduce procyclicality [17] in the model.

The proposed changes would specifically include: (1) The daily re-estimation of prices and correlations using ''synthetic'' futures; (2) an enhanced statistical distribution for modeling price returns for ''synthetic'' futures; and (3) a new anti-procyclical

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[7] The expected shortfall component is established as the estimated average of potential losses higher than the 99% value at risk threshold. The term ''value at risk'' or ''VaR'' refers to a statistical technique that, generally speaking, is used in risk management to measure the potential risk of loss for a given set of assets over a particular time horizon.

[8] A detailed description of the STANS methodology is available at *http://optionsclearing.com/risk-management/margins/*.

[9] Pursuant to OCC Rule 601(e)(1), OCC also calculates initial margin requirements for segregated futures accounts on a gross basis using the Standard Portfolio Analysis of Risk Margin Calculation System (''SPAN''). Commodity Futures Trading Commission (''CFTC'') Rule 39.13(g)(8), requires, in relevant part, that derivatives clearing organizations (''DCOs'') collect initial margin for customer segregated futures accounts on a gross basis. While OCC uses SPAN to calculate initial margin requirements for segregated futures accounts on a gross basis, OCC believes that margin requirements calculated on a net basis (*i.e.,* permitting offsets between different customers' positions held by a Clearing Member in a segregated futures account using STANS) affords OCC additional protections at the clearinghouse level against risks associated with liquidating a Clearing Member's segregated futures account. As a result, OCC calculates margin requirements for segregated futures accounts using both SPAN on a gross basis and STANS on a net basis, and if at any time OCC staff observes a segregated futures account where initial margin calculated pursuant to STANS on a net basis exceeds the initial margin calculated pursuant to SPAN on a gross basis, OCC collateralizes this risk exposure by applying an additional margin charge in the amount of such difference to the account. *See* Securities Exchange Act Release No. 72331 (June 5, 2014), 79 FR 33607 (June 11, 2014) (SR–OCC–2014–13).

[10] Generally speaking, the implied volatility of an option is a measure of the expected future volatility of the value of the option's annualized standard deviation of the price of the underlying security, index, or future at exercise, which is reflected in the current option premium in the market. Using the Black-Scholes options pricing model, the implied volatility is the standard deviation of the underlying asset price necessary to arrive at the market price of an option of a given strike, time to maturity, underlying asset price and given the current risk-free rate. In effect, the implied volatility is responsible for that portion of the premium that cannot be explained by the then-current intrinsic value (*i.e.,* the difference between the price of the underlying and the exercise price of the option) of the option, discounted to reflect its time value.

[11] A ''risk factor'' within OCC's margin system may be defined as a product or attribute whose historical data is used to estimate and simulate the risk for an associated product.

[12] In finance, the term ''mean reversion'' describes a financial time series in which returns can be very unstable in the short run but very stable in the long run.

[13] A random walk is a continuous process with random increments drawn independently from a particular distribution.

[14] This is known as a Gaussian Ornstein-Uhlenbeck process. *See* Uhlenbeck, G.E. and L.S. Ornstein, ''On the Theory of Brownian Motion,'' *Physical Review,* 36, 823–841 (1930) (explaining the Gaussian Ornstein-Uhlenbeck process).

[15] A data set with a ''fat tail'' is one in which extreme price returns have a higher probability of occurrence than would be the case in a normal distribution.

[16] As discussed in further detail below, a ''synthetic'' futures time series, for the intended purposes of OCC, relates to a uniform substitute for a time series of daily settlement prices for actual futures contracts, which persists over many expiration cycles and thus can be used as a basis for econometric analysis.

[17] A quality that is positively correlated with the overall state of the market is deemed to be ''procyclical.'' For example, procyclicality may be evidenced by increasing margin or Clearing Fund requirements in times of stressed market conditions and low margin or Clearing Fund requirements when markets are calm. Hence, anti-procyclical features in a model are measures intended to prevent risk-based models from fluctuating too drastically in response to changing market conditions.

floor for variance estimates.[18] The main feature of the proposed model, relative to the current model, is the replacement of the underlying Volatility Index itself as a risk factor by risk factors that are based on observed futures prices (*i.e.,* the ''synthetic'' futures contracts). The proposed change would introduce a new set of risk factors and method for generating scenarios for those risk factors, and hence Volatility Index Futures settlement prices, to be incorporated into the STANS margin calculations. OCC believes its proposed methodology would provide for more accurate and responsive margin requirements and that the imposition of a floor for variance estimates would mitigate procyclicality in OCC's margin methodology for Volatility Index Futures. The proposed changes are described in further detail below.

1. Daily Re-Estimations Using Synthetic Futures

As noted above, OCC currently models the potential final settlement prices of Volatility Index Futures based on the underlying index itself. OCC proposes to modify its modeling approach for Volatility Index Futures by modeling the price distributions of ''synthetic'' futures on a daily basis based on the historical returns of futures contracts with approximately the same tenor (as opposed to OCC's current approach of calibrating the distribution based on the Volatility Index itself). A ''synthetic'' futures time series for the intended purposes of OCC relates to a uniform substitute for a time series of daily settlement prices for actual futures contracts, which persists over many expiration cycles and thus can be used as a basis for econometric analysis. One feature of futures contracts is that each contract may have a different expiration date, and at any one point in time there may be a variety of futures contracts on the same underlying interest, all with varying dates of expiry, so that there is no one continuous time series for those futures. ''Synthetic'' futures can be used to generate a continuous time series of futures contract prices across multiple expirations. These ''synthetic'' futures price return histories would be inputted into the existing Copula simulation process in STANS alongside the underlying interests of OCC's other cleared and cross-margin products and collateral. The purpose of this use of ''synthetic'' futures is to allow the margin system to better approximate correlations between futures contracts of different tenors by creating more price data points and their margin offsets.

Under the proposal, the historical ''synthetic'' time series for these Volatility Indexes would be updated daily and mapped to their corresponding futures contracts. By construction, the first ''synthetic'' time series would always contain returns of the front contract (*i.e.,* the contract closest to maturity, on any given day), the second, which would correspond to the next month out, and the remaining series would follow the same pattern. Following the expiration date of the front contract, each contract within a time series would be replaced with a contract maturing one month later. While ''synthetic'' time series contain returns from different contracts, a return on any given date is constructed from prices of the same contract (*e.g.,* as the front month futures contract ''rolls'' from the current month to the subsequent month, returns on the roll date would be constructed by using the same contract and not by calculating returns across months). The marginal probability distribution parameters for the ''synthetic'' time series (*i.e.,* marginal probabilities of various values of the variables in the distribution without reference to the values of the other variables) would be estimated daily using recent historical observations.[19] In cases in which the GARCH variance [20] forecast falls below the sample variance, in addition to being floored by the sample variance, the ''synthetic'' time series would additionally be ''scaled up'' through the introduction of a new floor on variance estimates based on the corresponding underlying index in order to reduce procyclicality in the model (as discussed in further detail below).

OCC believes that using synthetic futures in its daily re-estimation process would allow OCC's econometric model for Volatility Index Futures to reflect more current market information and achieve better coverage across the term curve.[21] As a result, OCC believes the proposed changes would result more accurate margin requirements for Clearing Members under the current market conditions.

2. Enhancements to Statistical Distribution for Volatility Index Futures

In addition to using a ''synthetic'' futures price return history in the process for daily re-estimation of model parameters, OCC is proposing additional enhancements to its margin methodology for Volatility Index Futures to introduce asymmetry into the statistical distribution used to model price returns of the ''synthetic'' futures. The econometric model currently used in STANS for all price risk factors is an asymmetric GARCH(1,1) with symmetric Standardized Normal Reciprocal Inverse Gaussian (or ''NRIG'')-distributed logarithmic returns.[22] OCC proposes to move to an asymmetric NRIG distribution for purposes of modeling proportionate returns of the ''synthetic'' futures. OCC believes the asymmetric NRIG distribution has a better ''goodness of fit'' [23] to the historical data and allows for more appropriate modeling of observed asymmetry of the distribution. As a result, OCC believes that the proposed change would lead to more consistent treatment of returns both on the upside as well as downside of the distribution. Accordingly, OCC believes that the proposed changes would result in margin requirements for Volatility Index Futures that respond more appropriately to changes in market volatility and therefore are more accurate.

3. Introduction of Anti-Procyclical Floor for Variance Estimates

OCC also proposes to introduce a new floor for variance estimates of the Volatility Index Futures that would be

[18] OCC would also make a number of conforming changes throughout it Margins Methodology so that the document arcuately reflects the adoption of the new model.

[19] However, for any tenor extension or new contract that does not have enough historical data for the associated ''synthetic'' security, the scenarios for the longest tenor ''synthetic'' with enough history would be used as a proxy for generating futures theoretical price scenarios. In this case, the long run floor (discussed below) would be borrowed from the proxy ''synthetic.''

[20] *See generally* Tim Bollerslev, ''Generalized Autoregressive Conditional Heteroskedasticity,'' *Journal of Econometrics,* 31(3), 307–327 (1986). The acronym ''GARCH'' refers to an econometric model that can be used to estimate volatility based on historical data. The general distinction between the ''GARCH variance'' and the ''sample variance'' for a given time series is that the GARCH variance uses the underlying time series data to forecast volatility.

[21] In 2018, the Commission approved, and issued a Notice of No-Objection to, proposed changes to OCC's margin methodology designed to enable OCC to: (1) Obtain daily price data for equity products for use in the daily estimation of econometric model parameters; (2) enhance OCC's econometric model for updating statistical parameters for all risk factors that reflect the most recent data obtained; (3) improve the sensitivity and stability of correlation estimates across risk factors by using de-volatized returns; and (4) improve OCC's methodology related to the treatment of defaulting securities. *See* Securities Exchange Act Release No. 83326 (May 24, 2018), 83 FR 25081 (May 31, 2018) (SR–OCC–2017–022) and Securities Exchange Act Release No. 83305 (May 23, 2018), 83 FR 24536 (May 29, 2018) (SR–OCC–2017–811). Under the proposal, correlation updates for ''synthetic'' futures would be done daily with a one-day lag.

[22] *See id.*

[23] The goodness of fit of a statistical model describes the extent to which observed data match the values generated by the model.

modeled under the newly proposed approach to mitigate procyclicality in OCC's margin model. In order to incorporate a variance level implied by a longer time series of data, OCC would calculate a floor for variance estimates based on the underlying index (*e.g.,* VIX) which is expected to have a longer history that is more reflective of the long-run variance level that cannot be otherwise captured using the ''synthetic'' futures data. The floor would therefore reduce the impact of a sudden increase in margin requirements from a low level and therefore mitigate procyclicality in the model.

Clearing Member Outreach

In order to inform Clearing Members of the proposed change, OCC has provided updates to members at OCC Roundtable [24] and Financial Risk Advisory Council (or ''FRAC'') [25] meetings and will provide additional reminders about the proposed changes at its next FRAC meeting. In addition, OCC will publish an Information Memo to all Clearing Members describing the proposed changes and will provide additional periodic Information Memo updates prior to the implementation date. Additionally, OCC will perform targeted and direct outreach with Clearing Members that would be most impacted by the proposed change, and OCC would work closely with such Clearing Members to coordinate the implementation and to discuss the impact and timing of any required collateral deposits that may result from the proposed change.[26]

Implementation Timeframe

OCC plans to implement the proposed changes on May 20, 2019, provided that all necessary regulatory approvals are received by that date. If all regulatory approvals are not received by May 20, 2019, or if implementation on that date becomes otherwise impractical, OCC will implement the proposed changes within thirty (30) days after the date that OCC receives all necessary regulatory approvals for the proposed changes. OCC will announce any alternative implementation date of the proposed changes by an Information Memo posted to its public website at least one week prior to implementation.

Anticipated Effect on and Management of Risk

OCC believes that the proposed changes would reduce the nature and level of risk presented by OCC because it would introduce enhancements to OCC's margin methodology so that OCC's margin models reflect more current market information for Volatility Index Futures; use a statistical distribution for modeling proportionate returns of the ''synthetic'' futures, which OCC believes has a better ''goodness of fit'' to the historical data and allows for more appropriate modeling of observed asymmetry of the distribution; and reduce procyclicality in the model.

The main feature of the proposed model, relative to the current model, is the replacement of the underlying Volatility Index itself as a risk factor by risk factors that are based on observed futures prices (*i.e.,* the ''synthetic'' futures contracts). OCC believes that using ''synthetic'' futures in its daily re-estimation process would allow OCC's econometric model for Volatility Index Futures to reflect more current market information and achieve better coverage across the term curve. As a result, OCC believes the proposed changes would result more accurate margin requirements for Clearing Members under the current market conditions that respond more appropriately to changes in market volatility. In addition, OCC believes that the proposed change to an asymmetrical NRIG statistical distribution would lead to more consistent treatment of returns both on the upside as well as downside of the distribution and therefore result in margin requirements for Volatility Index Futures that respond more appropriately to changes in market volatility and therefore are more accurate. Finally, the proposed changes would enhance OCC's approach for modeling Volatility Index Futures by introducing a floor on variance estimates in the model to mitigate procyclicality.

The proposed model would be used by OCC to calculate margin requirements designed to limit its credit exposures to participants, and OCC uses the margin it collects from a defaulting Clearing Member to protect other Clearing Members from losses as a result of the default and ensure that OCC is able to continue the prompt and accurate clearance and settlement of its cleared products. Accordingly, OCC believes the proposed changes would promote robust risk management for Volatility Index futures and promote safety and soundness consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act.[27]

For the foregoing reasons, OCC believes that the proposed change would enhance OCC's management of risk and reduce the nature or level of risk presented to OCC.

Consistency With the Payment, Clearing and Settlement Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[28] Section 805(a)(2) of the Clearing Supervision Act [29] also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act [30] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Act, which include Commission Rules 17Ad–22(b)(1), (b)(2) and (e)(6).[31]

Rule 17Ad–22(b)(1) [32] requires that a registered clearing agency that performs central counterparty services establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once a day and limit its exposures

[24] The OCC Roundtable was established to bring Clearing Members, exchanges and OCC together to discuss industry and operational issues. It is comprised of representatives of senior OCC staff, participant exchanges and Clearing Members, representing the diversity of OCC's membership in industry segments, OCC-cleared volume, business type, operational structure and geography.

[25] The Financial Risk Advisory Council is a working group comprised of exchanges, Clearing Members and indirect participants of OCC.

[26] Specifically, OCC will discuss with those Clearing Members how they plan to satisfy any increase in their margin requirements associated with the proposed change.

[27] 12 U.S.C. 5464(b).

[28] 12 U.S.C. 5461(b).

[29] 12 U.S.C. 5464(a)(2).

[30] 12 U.S.C. 5464(b).

[31] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (''Clearing Agency Standards''); 78961 (September 28, 2016, 81 FR 70786 (October 13, 2016) (S7–03–14) (''Standards for Covered Clearing Agencies''). The Standards for Covered Clearing Agencies became effective on December 12, 2016. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5) and therefore OCC must comply with new section (e) of Rule 17Ad–22.

[32] 17 CFR 240.17Ad–22(b)(1).

to potential losses from defaults by its participants under normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control. As described above, the proposed changes would introduce new model enhancements for OCC's cleared Volatility Index Futures. OCC would use the risk-based model enhancements described herein to measure its credit exposures to its participants on a daily basis and determine margin requirements based on such calculations. OCC believes that the proposed enhancements would result in more accurate and responsive margin requirements by ensuring that OCC's margin models reflect more current market information for Volatility Index Futures and using an asymmetric distribution in its model that has a better ''goodness of fit'' to the historical data and allows for more appropriate modeling of observed asymmetry of the distribution. The proposed changes would also introduce a new floor on variance estimates in the model to mitigate procyclicality. OCC believes the proposed changes are therefore designed to ensure that OCC sets margin requirements that would serve to limit OCC's exposures to potential losses from defaults by its participants under normal market conditions so that the operations of OCC would not be disrupted, and non-defaulting participants would not be exposed to losses that they cannot anticipate or control. Accordingly, OCC believes the proposed changes are consistent with Rule 17Ad–22(b)(1).[33]

Rule 17Ad–22(b)(2)[34] further requires, in part, that a registered clearing agency that performs central counterparty services establish, implement, maintain and enforce written policies and procedures reasonably designed use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements. As noted above, OCC would use the proposed model enhancements to calculate margin requirements for Volatility Index Futures in a manner designed to limit its credit exposures to participants under normal market conditions. Moreover, OCC believes that the proposed risk-based model enhancements for Volatility Index Futures would result in more accurate and responsive margin requirements for OCC's Clearing Members and would introduce an asymmetric distribution into its model that has a better ''goodness of fit'' to the historical data and allows for more appropriate modeling of observed asymmetry of the distribution. The proposed floor on variance estimates would also help to reduce procyclicality in margin requirements for Volatility Index Futures. The risk-based model would therefore be used to calculate margin requirements designed to limit OCC's credit exposures to participants under normal market conditions in a manner consistent with Rule 17Ad–22(b)(2).[35]

Rules 17Ad–22(e)(6)(i), (iii), and (v)[36] further require that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, among other things: (1) Considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market; (2) calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default; and (3) uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.

As described in detail above, OCC believes that the proposed model enhancements would result in more accurate, more responsive, and less procyclical margin requirements for OCC's Clearing Members clearing Volatility Index Futures, with such margin serving to protect other Clearing Members from losses arising as a result of a Clearing Member default. The proposed changes are intended to ensure that OCC's margin models reflect more current market information for Volatility Index Futures and would introduce an asymmetric distribution into its model that has a better ''goodness of fit'' to the historical data and allows for more appropriate modeling of the observed asymmetry of the distribution. Additionally, OCC would introduce a floor on variance estimates in the model to limit procyclicality. OCC therefore believes the proposed changes are reasonably designed to consider and produce margin levels commensurate with the risks and particular attributes of OCC's cleared Volatility Index Futures, calculate margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default, and apply an appropriate method for measuring credit exposure that accounts for risk factors and portfolio effects of Volatility Index Futures in a manner consistent with Rules 17Ad–22(e)(6)(i), (iii), and (v).[37]

The changes are not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

[33] *Id.*

[34] 17 CFR 240.17Ad–22(b)(2).

[35] *Id.*

[36] 17 CFR 240.17Ad–22(e)(6)(i), (iii), and (v).

[37] *Id.*

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2019–801 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–OCC–2019–801. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2019–801 and should be submitted on or before May 7, 2019.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–08083 Filed 4–22–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33449; File No. 812–14970]

Putnam Managed Municipal Income Trust, et al.

April 17, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act to permit registered closed-end investment companies to make periodic distributions of long-term capital gains more frequently than permitted by section 19(b) or rule 19b–1.

Applicants: Putnam Managed Municipal Income Trust (''PMM''), a diversified closed-end investment company registered under the Act and organized as a Massachusetts business trust; Putnam Master Intermediate Income Trust (''PIM''), a diversified closed-end investment company registered under the Act and organized as a Massachusetts business trust; Putnam Municipal Opportunities Trust (''PMO''), a non-diversified closed-end investment company registered under the Act and organized as a Massachusetts business trust; Putnam Premier Income Trust (''PPT,'' and together with PMM, PIM, and PMO, the ''Funds''), a non-diversified closed-end investment company registered under the Act and organized as a Massachusetts business trust; Putnam Investment Management, LLC (''Putnam Management''), a limited liability company organized under the laws of Massachusetts; and Putnam Investments Limited (''Putnam Investments,'' and together with Putnam Management, the ''Advisers''), a private limited company organized under the laws of the United Kingdom, each of Putnam Management and Putnam Investments registered under the Investment Advisers Act of 1940, and serving as investment adviser and sub-adviser to the Funds, respectively (the Advisers, together with the Funds, the ''Applicants'').[1]

Filing Dates: The application was filed on November 6, 2018, and amended on March 18, 2019.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 13, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: Bryan Chegwidden, Esq., Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036 and Robert T. Burns, Vice President, Putnam Investment Management, LLC, 100 Federal Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel at (202) 551–6819, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Summary of the Application

1. Section 19(b) of the Act generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b–1 under the Act limits to one the number of capital gain dividends, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986 (''Code,'' and such dividends, ''distributions''), that a

[1] Applicants request that the order also apply to each other registered closed-end investment company advised or to be advised in the future by Putnam Management, Putnam Investments, or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Putnam Management or Putnam Investments (including any successor in interest) (each such entity, including the Advisers, also the ''Adviser'') that in the future seeks to rely on the order (such investment companies, together with the Funds, are collectively the ''Funds'' and, individually, a ''Fund''). A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

registered investment company may make with respect to any one taxable year, plus a supplemental distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Applicants believe that investors in certain closed-end funds may prefer an investment vehicle that provides regular current income through a fixed distribution policy (''Distribution Policy''). Applicants propose that a Fund be permitted to adopt a Distribution Policy, pursuant to which the Fund would distribute periodically (as frequently as twelve times in a taxable year) to its common stockholders a fixed percentage of the market price of the Fund's common stock at a particular point in time or a fixed percentage of net asset value (''NAV'') at a particular time or a fixed amount per share of common stock, any of which may be adjusted from time to time.

3. Applicants request an order under section 6(c) of the Act granting an exemption from section 19(b) of the Act and rule 19b–1 to permit a Fund to distribute periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as frequently as twelve times in any one taxable year in respect of its common stock and as often as specified by, or determined in accordance with the terms of, any preferred stock issued by the Fund. Section 6(c) of the Act provides, in relevant part, that the Commission may exempt any person or transaction from any provision of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants state that any order granting the requested relief will be subject to the terms and conditions stated in the application, which generally are designed to address the concerns underlying section 19(b) and rule 19b–1, including concerns about proper disclosures and shareholders' understanding of the source(s) of a Fund's distributions and concerns about improper sales practices. Among other things, such terms and conditions require that (1) the board of directors or trustees of the Fund (the ''Board'') review such information as is reasonably necessary to make an informed determination of whether to adopt the proposed Distribution Policy and that the Board periodically review the amount of the distributions in light of the investment experience of the Fund, and (2) that the Fund's shareholders receive appropriate disclosures concerning the distributions.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–08067 Filed 4–22–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85676; File No. SR–FICC–2019–001]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the GSD and MBSD Methodology Documents and the MBSD Clearing Rules

April 17, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 5, 2019, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change [3] consists of amendments to the GSD Methodology Document—GSD Initial Market Risk Margin Model (''GSD QRM Methodology Document'') [4] and the MBSD Methodology and Model Operations Document—MBSD Quantitative Risk Model [5] (''MBSD QRM Methodology Document,'' and together with the GSD QRM Methodology Document, the ''QRM Methodology Documents'') to remove specific references (and explanations relating thereto) to the look-back periods for (1) the alternative volatility calculation (''Margin Proxy'') [6] of GSD and MBSD and (2) the two haircut rates that form the basis of the GSD haircut charge.[7] FICC would replace the specific references to the look-back periods with more general language that would (i) refer to a monthly parameter report, (ii) specify the governance around changing the look-back periods, and (iii) state that the look-back period would not be less than one year. FICC is also proposing to make certain clarifications, corrections, and technical changes to the GSD QRM Methodology Document, and a clarification and certain technical changes to the MBSD QRM Methodology Document.

FICC is also proposing to make certain clarifications to the MBSD Rules. Specifically, FICC would add a definition of ''Margin Proxy'' and use

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used herein and not defined shall have the meaning assigned to such terms in the FICC Government Securities Division (''GSD'') Rulebook (''GSD Rules'') and the FICC Mortgage-Backed Securities Division (''MBSD,'' and together with GSD, the ''Divisions'') Clearing Rules (''MBSD Rules''), as applicable, *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[4] The GSD QRM Methodology Document was filed as a confidential exhibit in the rule filing and advance notice for GSD sensitivity VaR. *See* Securities Exchange Act Release No. 83362 (June 1, 2018) 83 FR 26514 (June 7, 2018) (SR–FICC–2018–001) (''GSD Approval Order'') and Securities Exchange Act Release No. 83223 (May 11, 2018) 83 FR 23020 (May 17, 2018) (SR–FICC–2018–801) (''GSD Advance Notice'').

[5] The MBSD QRM Methodology Document was filed as a confidential exhibit in the rule filing and advance notice for MBSD sensitivity VaR. *See* Securities Exchange Act Release No. 79868 (January 24, 2017) 82 FR 8780 (January 30, 2017) (SR–FICC–2016–007) (''MBSD Approval Order'') and Securities Exchange Act Release No. 79843 (January 19, 2017) 82 FR 8555 (January 26, 2017) (SR–FICC–2016–801) (''MBSD Advance Notice'').

[6] FICC has adopted procedures that would govern in the event that the vendor fails to provide risk analytics data used by FICC to calculate the VaR Charge (which is defined in GSD Rule 1 and MBSD Rule 1). *Supra* note 3. These procedures include the application of the Margin Proxy. Specifically, each Division's Margin Proxy would be applied as an alternative volatility calculation for the VaR Charge (subject to the VaR Floor) if FICC determines that the data disruption will extend beyond five (5) business days. *See* GSD Approval Order and MBSD Approval Order, *supra* notes 4 and 5.

[7] Occasionally, portfolios contain classes of securities that reflect market price changes that are not consistently related to historical risk factors. The value of these securities is often uncertain because the securities' market volume varies widely, thus the price histories are limited. Because the volume and price information for such securities is not robust, a historical simulation approach would not generate VaR Charge amounts that adequately reflect the risk profile of such securities. FICC utilizes a haircut method (hereinafter referred to as the ''GSD haircut charge'') based on the volatility of historic index returns for any security that lacks sufficient historical data to be incorporated into the sensitivity approach. *See* GSD Approval Order and MBSD Approval Order, *supra* notes 4 and 5. The GSD haircut charge consists of two haircut rates: (i) The haircut rate for mortgage-backed securities (''MBS'') pools without sensitivity analytics data and (ii) the haircut rate for Treasury and Agency bonds without sensitivity analytics data (hereinafter, the ''GSD Haircut Rates''). The proposal applies to the look-back periods for the GSD Haircut Rates.

such term in the definition of ''VaR Charge,'' as described below. In addition, FICC would clarify the definition of ''VaR Charge'' in the MBSD Rules by adding the word ''Clearing'' before the word ''Members.''

FICC is requesting confidential treatment of the QRM Methodology Documents and has filed them separately with the Secretary of the Commission.[8]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to amend the QRM Methodology Documents to remove specific references (and explanations relating thereto) to the look-back periods for the (1) Margin Proxy of GSD and MBSD and (2) GSD Haircut Rates. FICC would replace these specific references to the look-back periods with more general language as described below. FICC is also proposing to make certain clarifications, corrections and technical changes to the GSD QRM Methodology Document, and a clarification and certain technical changes to the MBSD QRM Methodology Document.

FICC is also proposing to make certain clarifications to the MBSD Rules. Specifically, FICC would add a definition of ''Margin Proxy'' and use such term in the definition of ''VaR Charge,'' as described below. In addition, FICC is proposing to clarify the definition of ''VaR Charge'' in the MBSD Rules by adding the word ''Clearing'' before the word ''Members.''

(A) Replacing Specific References to the Look-Back Periods for the Margin Proxy of GSD and MBSD and the GSD Haircut Rates With More General Language in the QRM Methodology Documents

Each of the QRM Methodology Documents provides the methodology by which FICC calculates the GSD and MBSD VaR Charges. The QRM Methodology Documents specify model inputs, parameters and assumptions, among other information. With respect to the Margin Proxy, each of the QRM Methodology Documents refers to the specific look-back periods that are in use today. Similarly, the GSD QRM Methodology Document refers to the specific look-back periods for the GSD Haircut Rates. FICC is proposing to amend the QRM Methodology Documents to remove the specific references to the current look-back periods in use and replace them with general language that would refer to a monthly parameter report (that would contain the specific look-back periods).

FICC has the discretion to change the look-back periods that are the subject of this proposal. Specifically, with respect to the GSD haircut charge, the GSD QRM Methodology Document provides that certain key model parameters, including the look-back periods for the GSD Haircut Rates, are subject to periodic review and recalibration.[9] With respect to the Margin Proxy, the rule filings for GSD sensitivity VaR and MBSD sensitivity VaR state that if FICC observes material differences between the Margin Proxy calculations and the aggregate Clearing Fund requirement calculated using the proposed VaR model (*i.e.,* the sensitivity approach), or if the Margin Proxy's backtesting results do not meet FICC's 99 percent confidence level, management may recommend remedial actions to the Model Risk Governance Committee (''MRGC''), and to the extent necessary the Management Risk Committee (''MRC''), such as increasing the look-back period and/or applying an appropriate historical stressed period to the Margin Proxy calibration.[10] By replacing specific references to the look-back periods in the QRM Methodology Documents with general language, FICC would be acting within its existing discretion and would no longer need to submit subsequent rule filings to change these look-back periods unless such changes require an advance notice.

Under the proposal, the QRM Methodology Documents would provide that the look-back periods for the Margin Proxy and the two GSD Haircut Rates would be tracked in a monthly parameter report. The QRM Methodology Documents would also provide that these look-back periods shall not be less than one year. Finally, the QRM Methodology Documents would state that any changes to these look-back periods would be subject to the governance process set forth in the Clearing Agency Model Risk Management Framework (the ''Framework).[11] The Framework provides that the Model Validation and Control Group (''MVC'') prepares Model performance monitoring reports on both a monthly and daily basis. On a monthly basis, MVC (i) performs sensitivity analysis on each of FICC's Models,[12] (ii) reviews key parameters and assumptions for backtesting, and (iii) considers modifications to ensure that the backtesting practices of FICC are appropriate for determining the adequacy of its applicable margin resources.[13] The Framework states that MRGC will review the Model performance monitoring, which includes review of risk-based Models used to calculate margin requirements and relevant parameters/threshold indicators, sensitivity analysis, and Model backtesting results. Serious performance concerns will be escalated to the MRC.[14]

(B) Clarifications, Corrections, and Technical Changes to the GSD QRM Methodology Document, and a Clarification and Technical Changes to the MBSD QRM Methodology Document

FICC is proposing to make certain clarifications, corrections, and technical changes to the GSD QRM Methodology Document, and a clarification and certain technical changes to the MBSD QRM Methodology Document, as described in detail below.

[8] *See* 17 CFR 240–24b–2.

[9] *Supra* note 4.

[10] *See* Securities Exchange Act Release No. 82588 (January 26, 2018) 83 FR 4687, 4692 (February 1, 2018) (SR–FICC–2018–001) (''Notice of GSD Rule Filing''); Securities Exchange Act Release No. 79491 (December 7, 2016) 81 FR 90001, 90005 (December 13, 2016) (SR–FICC–2016–007) (''Notice of MBSD Rule Filing''); and MBSD Approval Order, *supra* note 5, at 8782–8783.

[11] Securities Exchange Act Release No. 81485 (August 25, 2017) 82 FR 41433 (August 31, 2017) (SR–DTC–2017–008; SR–FICC–2017–014; SR–NSCC–2017–008) (''Framework Approval Order''). In general, the Framework describes the model risk management practices adopted by FICC, National Securities Clearing Corporation and The Depository Trust Company. The Framework is designed to help identify, measure, monitor, and manage the risks associated with the design, development, implementation, use, and validation of quantitative models. The Framework describes (i) governance of the Framework; (ii) key terms; (iii) model inventory procedures; (iv) model validation procedures; (v) model approval process; and (vi) model performance procedures. *Id.*

[12] The term ''Model'' refers to a quantitative method, system, or approach that applies statistical, economic, financial, or mathematical theories, techniques, and assumptions to process input data into quantitative estimates. *Id.*

[13] *Id.* at 41435.

[14] *Id.*

(1) GSD QRM Methodology Document

a. Clarifications

FICC would make certain clarifications to the GSD QRM Methodology Document, as described below.

In the section of the GSD QRM Methodology Document that describes key parameters (where the look-back periods are currently listed), FICC proposes to rearrange the list so that the look-back periods associated with sensitivity VaR are grouped together and the look-back periods for GSD Haircut Rates are grouped together. FICC also proposes to add sub-headings to enhance readability and clarity.

In addition, in the section of the GSD QRM Methodology Document that describes key parameters, FICC would amend the language describing the GSD Haircut Rates to correspond to the language used in later sections for clarity and consistency.

Where the GSD QRM Methodology Document references the governance practice regarding the review and recalibration of the look-back periods, FICC also proposes to specifically reference the Framework. FICC would provide additional clarity by adding language describing types of data that would be used to determine key model parameters.[15] FICC would also clarify the GSD QRM Methodology Document by adding language stating that management may implement any approved changes.

With respect to the descriptions of some of the GSD Haircut Rates, FICC would (i) add clarifying terminology and (ii) delete duplicative explanations and replace them with a cross-reference to the appendix, which contains the same explanation.

b. Corrections

FICC also proposes to make certain corrections to the GSD QRM Methodology Document. FICC would correct a typographical error in the description of key parameters by revising a reference from MBSD to MBS. In addition, to correct an omission in the GSD QRM Methodology Document, FICC would add that if FICC observes material differences between the Margin Proxy calculations and the aggregate Clearing Fund requirement calculated using the VaR model, management may recommend remedial actions (as was stated in the GSD sensitivity VaR rule filing).[16]

c. Technical Changes

Finally, FICC proposes to make certain technical changes (*e.g.,* word usage, spacing corrections, grammar changes, and revising certain references from singular to plural) to the GSD QRM Methodology Document. For example, for consistency, FICC proposes to revise a reference from ''window'' to ''period'' in the description of key parameters and all references from ''lookback'' to ''look-back'' and from ''TBA/pool'' to ''Pool-TBA.''

(2) MBSD QRM Methodology Document

a. Clarification

FICC proposes to clarify the MBSD Methodology Document by adding language stating that management may implement any approved changes.

b. Technical Changes

FICC proposes to make certain technical changes to the MBSD QRM Methodology Document (*e.g.,* grammar changes and revising certain references from singular to plural). FICC would also revise a reference from ''lookback'' to ''look-back'' for consistency. In addition, FICC would remove the revision history because it is solely administrative and would not affect the calculation of margin or Clearing Members' substantive rights or obligations.

(C) Clarifications to the MBSD Rules

FICC is also proposing to make certain clarifications to the MBSD Rules. Specifically, FICC would add a definition of ''Margin Proxy'' and use such term in the definition of ''VaR Charge.'' In addition, FICC would clarify the definition of ''VaR Charge'' in the MBSD Rules by adding the word ''Clearing'' before the word ''Members.''

2. Statutory Basis

FICC believes that this proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, FICC believes that the proposed changes to the QRM Methodology Documents and the MBSD Rules described above are consistent with Section 17A(b)(3)(F) of the Act, for the reasons described below.[17] FICC also believes that the proposed changes to the MBSD Rules are consistent with Rule 17Ad–22(e)(23)(ii), as promulgated under the Act, for the reasons described below.[18]

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency be designed ''to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.'' [19]

FICC believes that amending the QRM Methodology Documents to remove specific references (and explanations relating thereto) to the look-back periods for the (1) Margin Proxy of GSD and MBSD and (2) the GSD Haircut Rates and replace them with more general language as described above would enhance clarity and consistency for FICC. Specifically, the proposed changes would ensure that the QRM Methodology Documents (which have been filed confidentially) are in line with the understanding of FICC's risk management group (''FICC Risk Management'') that, if FICC observes material differences between the Margin Proxy calculations and the aggregate Clearing Fund requirement calculated using the VaR model, or if the Margin Proxy's backtesting results do not meet FICC's 99 percent confidence level, then, subject to its MRGC/MRC governance process described above, FICC may change the look-back periods for the GSD and MBSD Margin Proxy as long as the look-back periods are not less than one year. Similarly, if FICC observes that the asset class backtesting performance associated with the GSD Haircut Rates is not at the 99% confidence level, then, subject to its MRGC/MRC governance process described above, FICC may change the look-back periods for the GSD Haircut Rates as long as the look-back periods are not less than one year. FICC believes that enhancing clarity and consistency within FICC with respect to changes to the aforementioned look-back periods would help to ensure that FICC calculates and collects adequate margin from its Clearing Members and Netting Members and would thereby assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, consistent with Section 17A(b)(3)(F) the Act.[20]

FICC believes that the proposed changes, which constitute certain clarifications, corrections, and technical changes to the GSD QRM Methodology Document, and a clarification and certain technical changes to the MBSD QRM Methodology Document, would also enhance the clarity of the QRM Methodology Documents for FICC. As the QRM Methodology Documents are used by FICC Risk Management personnel regarding the calculation of

[15] *Supra* note 11.

[16] *See* Notice of GSD Rule Filing, *supra* note 10, at 4692.

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 17 CFR 240.17Ad–22(e)(23)(ii).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] *Id.*

margin requirements, it is important for the accurate and smooth functioning of the margining process that FICC Risk Management understands when look-back periods can change and the governance process associated with them. The changes referenced in this paragraph would promote such understanding. This would, in turn, allow FICC Risk Management to charge an appropriate level of margin. As such, FICC believes that enhancing the clarity of the QRM Methodology Documents would assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, consistent with Section 17A(b)(3)(F) the Act.[21]

FICC believes the proposed clarifications to Rule 1 of the MBSD Rules would help ensure that the calculation of margin is clear and transparent to Clearing Members and FICC, and thereby, help ensure that FICC calculates and collects adequate margin from Clearing Members and that Clearing Members understand the relevant definition. As such, FICC believes that the proposed clarifications to Rule 1 of the MBSD Rules would also assure the safeguarding of securities and funds which are in the custody and control of FICC or for which it is responsible, consistent with Section 17A(b)(3)(F) the Act.[22]

Rule 17Ad–22(e)(23)(ii) under the Act requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.[23] FICC believes the proposed clarifications to Rule 1 of the MBSD Rules would help ensure that the calculation of margin is transparent and clear to Clearing Members, thereby enabling Clearing Members to better understand the calculation of margin as well as providing them with increased predictability and certainty regarding their obligations. As such, FICC believes that the proposed rule changes are consistent with Rule 17Ad–22(e)(23)(ii) under the Act.[24]

(B) Clearing Agency's Statement on Burden on Competition

FICC believes that the proposed changes to amend the QRM Methodology Documents to remove specific references (and explanations relating thereto) to the look-back periods for the (1) Margin Proxy of GSD and MBSD and (2) GSD Haircut Rates and replace them with more general language (as described above) could have an impact on competition. Specifically, FICC believes that the proposed change could burden competition because changes to the look-back periods could result in larger Required Fund Deposits amounts for some Members than the amount currently calculated.

When the proposal results in a larger Required Fund Deposit for Members, the proposed changes could burden competition for Members that have lower operating margins or higher costs of capital compared to other Members. Whether such burden on competition would be significant would depend on each Member's financial status and the specific risks presented by each Member's portfolio. Regardless of whether the burden on competition would be significant, FICC believes that any burden on competition imposed by the proposed changes would be both necessary and appropriate in furtherance of FICC's efforts to mitigate risks and meet the requirements of the Act,[25] as described in this filing and further below.

FICC believes the above-described burden on competition that may be created by the proposed changes to amend the QRM Methodology Documents to remove specific references (and explanations relating thereto) to the look-back periods for the (1) Margin Proxy of GSD and MBSD and (2) GSD Haircut Rates and replace them with more general language would be necessary in furtherance of the Act.[26] As stated above, with respect to the Margin Proxy, the proposed change would address situations where FICC observes material differences between the Margin Proxy calculations and the aggregate Clearing Fund requirement calculated using the VaR model, or where the Margin Proxy's backtesting results do not meet FICC's 99 percent confidence level. Similarly, with respect to the GSD Haircut Rates, the proposed changes would address situations where FICC observes that asset class backtesting performance is not at the 99% confidence level. Specifically, the proposed changes would help ensure that the QRM Methodology Documents (which have been filed confidentially) are in line with FICC Risk Management's understanding that, in those circumstances, FICC may change the look-back periods for the GSD and MBSD Margin Proxy and GSD Haircut Rates as long as the look-back periods are not less than one year. FICC believes that enhancing clarity and consistency within FICC with respect to changes to the aforementioned look-back periods would help to ensure that FICC calculates and collects adequate margin from its Clearing Members and Netting Members and would thereby assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, consistent with Section 17A(b)(3)(F) the Act.[27]

FICC also believes that the above-described burden on competition that could be created by the proposed change to amend the QRM Methodology Documents to remove specific references (and explanations relating thereto) to the look-back periods for the (1) Margin Proxy of GSD and MBSD and (2) GSD Haircut Rates and replace them with more general language would be appropriate in furtherance of the Act.[28] FICC believes these proposed changes would be appropriate in furtherance of the Act because they have been designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible. The proposal achieves this purpose by providing for FICC to act in circumstances where the 99% confidence level is not being met. Specifically, FICC would only change the look-back periods in certain circumstances (*i.e.,* where FICC observes material differences between the Margin Proxy calculations and the aggregate Clearing Fund requirement calculated using the sensitivity VaR model, or where the Margin Proxy's backtesting results do not meet FICC's 99 percent confidence level), and/or where FICC observes that the asset class backtesting performance is not at the 99% confidence level. Furthermore, FICC believes these proposed changes are appropriate because they would be consistent with the discretion (subject to FICC's governance) that FICC has to make changes to the look-back periods consistent with the GSD and MBSD sensitivity VaR filings and GSD QRM Methodology Document.[29] As such, FICC believes these proposed changes would help to ensure that FICC calculates and collects adequate margin from its Clearing Members and Netting Members, and therefore, are designed to assure the safeguarding of securities and funds, consistent with Section 17A(b)(3)(F) the Act.[30]

[21] *Id.*

[22] *Id.*

[23] 17 CFR 240.17Ad–22(e)(23)(ii).

[24] *Id.*

[25] 15 U.S.C. 78q–1(b)(3)(I).

[26] *Id.*

[27] 15 U.S.C. 78q-1(b)(3)(F).

[28] 15 U.S.C. 78q–1(b)(3)(I).

[29] *Supra* notes 4, 5, and 10.

[30] 15 U.S.C. 78q–1(b)(3)(F).

In addition, FICC does not believe the proposed clarifications, corrections, and technical changes to the GSD QRM Methodology Document and the proposed clarification and technical changes to the MBSD QRM Methodology Document described above would have any impact on competition because these proposed changes would enhance the clarity and accuracy of the QRM Methodology Documents and would not affect the substantive rights of Netting Members and Clearing Members.

FICC also does not believe that the proposed clarifications to the MBSD Rules would have any impact on competition because these proposed changes would enhance the clarity and accuracy of the MBSD Rules and would not affect the substantive rights of Clearing Members.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FICC–2019–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2019–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2019–001 and should be submitted on or before May 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–08099 Filed 4–22–19; 8:45 am]

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[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85681; File No. SR–BOX–2019–10]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rules Governing the Trading of Complex Customer Cross Orders

April 17, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 4, 2019, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to adopt rules governing the trading of Complex Customer Cross Orders. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing rules that will make existing functionality available to additional order types on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

BOX. Specifically, the Exchange is proposing rules to codify Complex Customer Cross Orders on the Exchange.[3] The Exchange notes that the proposed changes are similar to the rules of another exchange.[4] In addition, the Exchange is proposing to expand certain Complex Order protections to the newly codified Complex Customer Cross Orders.

Complex Customer Cross Orders

First, the Exchange is proposing to add text related to Complex Customer Cross Orders. Proposed Rule 7240(b)(4)(iii) defines a Complex Customer Cross Order as a type of Complex Order which is comprised of one Public Customer Complex Order to buy and one Public Customer Complex Order to sell (the same strategy) at the same price and for the same quantity.[5]

The Exchange uses the same crossing mechanism for the processing and execution of Complex Customer Cross Orders that is used for Customer Cross Orders in the regular market.[6] Proposed Rule 7110(c)(7) shall govern the trading of Complex Customer Cross Orders, as defined in Rule 7240(b)(4)(iii), on BOX. Proposed Rule 7110(c)(7) describes the execution price requirements that are specific to Complex Customer Cross Orders.[7] Specifically, Complex Customer Cross Orders are automatically executed upon entry provided that the execution (i) is at least $0.01 better than any Public Customer Complex Order on the Complex Order Book;[8] (ii) is at least $0.01 better than the cBBO[9] (iii) is at or better than any non-Public Customer Complex Order on the Complex Order Book; and (iv) is at or between the cNBBO.[10] The purpose of the requirement that the execution must be at least $0.01 better than any Public Customer Complex Order on the Complex Order Book is to ensure that the Complex Customer Cross Order does not trade in front of any resting Public Customer Complex Orders. The purpose of the requirement that the Complex Customer Cross Order be executed at or between the cNBBO is to ensure that net execution price is within the best net price available in the market and is in line with the requirement that simple Customer Cross Orders must execute at or within the NBBO.

The system will reject a Complex Customer Cross Order if, at the time of receipt of the Complex Customer Cross Order, the strategy is subject to an ongoing auction (including COPIP, Facilitation, and Solicitation auctions) or there is an exposed order on the strategy pursuant to Rule 7240(b)(3)(B). The purpose of this provision is to maintain an orderly market by avoiding the execution of Complex Customer Cross Orders with components that are involved in other system functions that could affect the execution price of the Complex Customer Cross Order, and by avoiding concurrent processing on the Exchange involving the same strategy.

Proposed Rule 7110(c)(7)(A) states that Complex Customer Cross Orders will be automatically cancelled if they cannot be executed. Proposed Rule 7110(c)(7)(B) provides that Complex Customer Cross Orders may only be entered in the minimum trading increments applicable to Complex Orders under Rule 7240(b)(1).

As a regulatory matter, proposed Rule 7110(c)(7)(C) states that IM–7140–1 applies to the entry and execution of Complex Customer Cross Orders.[11]

The following example illustrates the execution of a Complex Customer Cross Order:

Example 1—Execution of a Complex Customer Cross Order

BOX Leg A Book: 6.00–6.50

BOX Leg B Book: 3.00–3.30

Strategy: Buy A Call, Sell B Call

The cNBBO is 2.70–3.20

The cBBO[12] is 2.70–3.50

The Complex Order Book contains a Public Customer order to sell the strategy at 3.20 and has no non-Public Customer Orders for the strategy.

The Exchange receives a Complex Customer Cross Order representing Public Customers on both sides for the simultaneous purchase and sale of the strategy at a price of 3.19.

The order price is at least $0.01 better than the Public Customer Complex Order on the Complex Order Book and at least $0.01 better than the implied market price (the cBBO). Additionally, the order price is at or between the cNBBO and is at or better than any non-Public Customer Orders on the Complex Order Book. Therefore, the Complex Customer Cross Order is automatically executed upon entry.

The Exchange notes that the proposed rules for Complex Customer Cross Orders are based on the rules of another exchange with certain minor differences.[13] First, the MIAX Rule requires the execution price to be better than the best net price of a complex order. The proposal requires the execution price to be better than any Public Customer Complex Orders on the Complex Order Book and no worse than the price of any non-Public Customer Complex Orders. The Exchange believes this difference is minor because the execution price must respect the orders on the Complex Order Book and not trade ahead of Public Customer Orders on the Complex Order Book, which is in line with regular Customer Cross Orders. In addition, the Exchange notes that ISE allows Complex Customer Cross Orders to trade at the same price as non-Priority Complex Customer Cross Orders on the same strategy.[14] Pursuant to Rule 7110(c)(5), a Customer Cross Order must execute at a price that is at or between the best bid and offer on BOX and is not at the same price as a Public Customer Order on the BOX Book. Additionally, the Exchange is proposing to have the execution price be within the cNBBO, which MIAX does not provide. The Exchange believes this difference is minor because the Exchange is simply ensuring that the execution price respect the best net prices available in the market. Additionally, similar to the above, regular Customer Cross Orders may not trade through the NBBO.

Next, MIAX's Rule requires the execution to be at least $0.01 better than best price order on the strategy book or the derived market price, whichever is more aggressive. The Exchange also notes that MIAX includes non-displayed trading interest when determining the best price based on the regular books, which the Exchange is not proposing

[3] *See https://boxoptions.com/assets/RC-2017-11-CC_QCC_cNBBO-July-10-Implementation-1.pdf.*

[4] *See* MIAX Rules 518(b)(5) and 515(h)(3).

[5] Proposed Rule 7240(b)(4)(iii) is based on MIAX Rule 518(b)(5).

[6] *See* BOX Rule 7110(c)(5).

[7] Proposed Rule 7110(c)(7) is based on MIAX Rule 515(h)(3).

[8] The term ''Complex Order Book'' means the electronic book of Complex Orders maintained by the BOX Trading Host. *See* Rule 7240(a)(8).

[9] The term ''cBBO'' means the best net bid and offer price for a Complex Order Strategy based on the BBO on the BOX Book for the individual options components of such Strategy. *See* Rule 7240(a)(1).

[10] The term ''cNBBO'' means the best net bid and offer price for a Complex Order Strategy based on the NBBO for the individual options components of such Strategy. *See* Rule 7240(a)(3).

[11] Rule 7140(b) prevents an Options Participant executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on BOX an opportunity to trade with the agency order pursuant to Rule 7150 (Price Improvement Period), Rule 7245 (Complex Order Price Improvement Period) or Rule 7270 (Block Trades). However, the Exchange recognizes that it may be possible for an Options Participant to establish a relationship with a Customer or other person (including affiliates) to deny agency orders the opportunity to interact on BOX and to realize similar economic benefits as it would achieve by executing agency orders as principal. It will be a violation of this Rule for an Options Participant to circumvent this Rule by providing an opportunity for a Customer or other person (including affiliates) to execute against agency orders handled by the Options Participant immediately upon their entry into the Trading Host. *See* IM–7140–1.

[12] *See supra* note 9.

[13] *See* MIAX Rules 515(h)(3) and 518(b)(5).

[14] *See* Nasdaq ISE, LLC (''Nasdaq ISE'') Rule 722 Supplementary Material .08(d) [sic].

because the Exchange does not have non-displayed interest.

Further, MIAX rejects a Complex Customer Cross Order if, at the time of receipt, any component of the strategy is subject to a PRIME Auction, a Route Timer, or liquidity refresh pause. The Exchange is not proposing the same conditions.[15] With respect to not rejecting when a component is subject to an auction, the Exchange notes that this approach is in line with the treatment of a COPIP when there is an ongoing PIP on a component of the Complex Order. Specifically, the Exchange will accept Complex Orders designated for the COPIP where there is a PIP on an individual component.[16] Further, in order to ensure orderly markets involving multiple Complex Orders with common components, the Exchange is proposing additional circumstances in which a Complex Customer Cross Order will be rejected, specifically, when there is an exposed order on the strategy pursuant to rule 7240(b)(4)(iii), or there is an ongoing COPIP, Facilitation or Solicitation auction on the strategy.

Lastly, the Exchange proposes to delete the reference to COPIP in BOX Rule 7110(c)(5) to make clear that single-leg Customer Cross transactions may be executed when the series is involved in a COPIP. The Exchange notes that this is similar to functionality that exists on another exchange.[17]

Complex Order Protections for Complex Customer Cross Orders

Lastly, the Exchange proposes to expand certain Complex Order protections to Complex Customer Cross Orders. Specifically, the Exchange proposes to amend Rule IM–7240–1(a)(5) and IM–7240(b)(5) to apply these price protection checks to Complex Customer Cross Orders. The Exchange notes that another options exchange has similar price checks for Complex Customer Cross Orders.[18] The Exchange believes that these protections should be extended to Complex Customer Cross Orders as it will mitigate potential risks associated with market participants entering orders at unintended prices and orders trading at prices that are extreme and potentially erroneous, which may likely have resulted from human or operational error.

The Exchange will provide notice of the exact implementation date of the proposed protections, via Circular, at least two weeks prior to implementing the proposed change.[19]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[20] in general, and Section 6(b)(5) of the Act,[21] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The proposal to amend Rules 7110 and 7240 to codify rules covering Complex Customer Cross is consistent with Section 6(b)(5) of the Act because this proposal promotes just and equitable principles of trade and protects investors and the public interest by providing increased opportunities for the execution of Complex Orders. The Exchange believes that the proposed Complex Customer Cross rules will benefit Participants and the marketplace as a whole by adopting rules that allow for the trading of these types of orders on the Exchange. The Exchange believes the proposed rules for Complex Customer Cross Orders remove impediments to and perfects the mechanism of a free and open market and a national market system and will result in more efficient trading and enhance the likelihood of the Complex Orders executing at the best prices by providing additional order types resulting in potentially greater liquidity available for trading on the Exchange.

The proposed rule change will provide rules that make existing functionality available to additional order types. Providing rules that make Customer Cross available for Complex Orders removes impediments to and perfects the mechanisms of a free and open market and a national market system because Participants will be given additional ways in which they can execute Complex Orders.

The proposed rule change will protect investors and the public interest by assuring the existing priority and allocation rules applicable to the processing and execution of Customer Cross Orders and Complex Orders remains consistent with the processing and execution of these order types, unless otherwise specifically set forth in the rules.

The Exchange believes that the proposal to reject a Complex Customer Cross Order at the time of receipt of the order when the strategy is subject to an ongoing auction (including COPIP, Facilitation and Solicitation auctions), or there is an exposed order on the strategy, removes impediments to and perfects the mechanism of a free and open market by ensuring orderly markets involving multiple complex orders with common components.

The proposed rule change to implement a debit/credit check for Customer Cross Orders is consistent with the Act. With the use of debit/credit checks, the Exchange can further assist with the maintenance of a fair and orderly market by mitigating the potential risks associated with Complex Customer Cross Orders trading at prices that are inconsistent with their strategies (which may result in executions at prices that are extreme and potentially erroneous), which ultimately protects investors. This proposed implementation of the debit/credit check promotes just and equitable principles of trade, as it is based on the same general option and volatility pricing principles which the Exchange understands are used by market participants in their option pricing models.

Additionally, the Exchange also believes that calculating a maximum price for true butterfly spreads, vertical spreads, and box spreads will assist with the maintenance of fair and orderly markets by helping to mitigate the potential risks associated with Complex Customer Cross Orders trading at extreme and potentially erroneous prices that are inconsistent with particular Complex Order strategies. Further, the Exchange notes that the maximum price is designed to mitigate the potential risks of executions at prices that are not within an acceptable price range, as a means to help mitigate the potential risks associated with Complex Orders trading at prices that are inconsistent with their strategies, in

[15] BOX notes that it does not have either the Route Timer or liquidity refresh pause features on the Exchange. As such, BOX is not proposing to include these features under the Proposal.

[16] *See* IM–7245–2.

[17] *See* MIAX Rule 515(h). Under MIAX rule 515(h), single-leg Customer Cross Orders are rejected when the trading interest is subject to a PRIME Auction or PRIME Solicitation Auction. MIAX Rule 515(h) does not indicate that a single-leg Customer Cross Order will be rejected, if the series is subject to a cPRIME Auction.

[18] *See* Chicago Board Options Exchange, Incorporated (''Cboe'') Interpretations and Polices .08(c) and (g) to Rule 6.53C.

[19] Due to technological delays, Complex Order price protections detailed in SR–BOX–2018–13 have not yet been implemented. The Exchange will provide notice of the exact implementation date of these protections, including the proposed protections discussed herein, at least two weeks prior to implementing the proposed change.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

addition to the debit/credit check. As such, the proposed rule change is designed to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change to provide rules governing the trading of Complex Customer Cross Orders will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule is being proposed as a competitive response to the rules of another exchange.[22] Additionally, the proposed rule change is intended to promote competition by adding rules for new order types that enable Participants to execute Complex Orders on the Exchange. The Exchange believes that this enhances inter-market competition by enabling the Exchange to compete for this type of order flow with other exchanges that have similar rules and functionalities in place.

Further, the Exchange does not believe that the proposed Complex Order protections will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to the rules of another exchange.[23] Additionally, the Exchange believes the proposed rule change is beneficial to Participants as it will provide increased protections that will prevent the execution of certain Complex Orders that were entered in error. The Exchange believes the proposal is pro-competitive and should serve to attract additional Complex Orders to the Exchange. Further, the Exchange does not believe the proposed change will not impose a burden on intramarket competition because it is available to all Participants.

For the reasons stated, the Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and the Exchange believes the proposed change will, in fact, enhance competition.

[22] *See* MIAX Rules 515(h)(3) and 518(b)(5).

[23] *See supra,* note 18.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2019–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2019–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2019–10, and should be submitted on or before May 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–08101 Filed 4–22–19; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[26] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15927 and #15928; Nebraska Disaster Number NE–00074]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Nebraska

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA—4420—DR), dated 04/05/2019.

Incident: Severe Winter Storm, Straight-line Winds, and Flooding.

Incident Period: 03/09/2019 through 04/01/2019.

DATES: Issued on 04/05/2019.

Physical Loan Application Deadline Date: 06/04/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 01/06/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Nebraska, dated 04/05/2019, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Banner, Brown, Cheyenne, Dawes, Deuel, Franklin, Garden, Harlan, Keya Paha, Kimball, Lincoln, Merrick, Phelps, Rock, Saunders, Sheridan, Sioux, Stanton, Thurston, Webster.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–08090 Filed 4–22–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15898 and #15899; IOWA Disaster Number IA–00086]

Presidential Declaration Amendment of a Major Disaster for the State of IOWA

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of IOWA (FEMA–4421–DR), dated 03/23/2019.

Incident: Severe Storms and Flooding.

Incident Period: 03/12/2019 and continuing.

DATES: Issued on 03/23/2019.

Physical Loan Application Deadline Date: 05/22/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 12/23/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Iowa, dated 03/23/2019, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):
Pottawattamie, Shelby

Contiguous Counties (Economic Injury Loans Only):
Iowa: Audubon, Carroll, Cass
Nebraska: Douglas

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–08119 Filed 4–22–19; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Survey of Airman Satisfaction With Aeromedical Certification Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 1, 2019. The collection involves soliciting feedback from airmen on service quality of Aeromedical Certification Services. The information to be collected will be used to inform improvements in Aeromedical Certification Services.

DATES: Written comments should be submitted by May 23, 2019.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ashley Awwad by email at: *Ashley.awwad@faa.gov;* phone: 816–786–5716.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0707.

Title: Survey of Airman Satisfaction with Aeromedical Certification Services.

Form Numbers: N/A.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 1, 2019 (84 FR 1265). The Federal Aviation Administration (FAA), through the Office of Aerospace Medicine (OAM), is responsible for the medical certification of pilots and certain other personnel under 14 CFR 67 to ensure they are medically qualified to operate aircraft and perform their duties safely. In the accomplishment of this responsibility, OAM provides a number of services to pilots, and has established goals for the performance of those services. This is a biennial survey designed to meet the requirement to survey stakeholder satisfaction under Executive Order No. 12862, ''Setting Customer Service Standards,'' and the Government Performance and Results Act of 1993 (GPRA).

The survey of airman satisfaction with Aeromedical Certification Services assesses airman opinion of key dimensions of service quality. These

dimensions, identified by the OMB Statistical Policy Office in the 1993 ''Resource Manual for Customer Surveys,'' are courtesy, competence, reliability, and communication. The survey also provides airmen with the opportunity to provide feedback on the services and a medical certificate application tool they use. This information is used to inform improvements in Aeromedical Certification Services. The survey was initially deployed in 2004, and deployed again in 2006, 2008, 2012, 2014, and 2016 (OMB Control No. 2120–0707). Across collections, minor revisions have been made to the survey items and response options to reflect changes in operational services and survey technology. In the current collection, format changes have been made to accommodate multiple administration modes (*i.e.,* paper, desktop computer, and mobile device), reduce the burden on the individual respondent, and potentially improve the response rate.

Respondents: 2,323 Airmen.

Frequency: Biannually.

Estimated Average Burden per Response: 10–15 minutes.

Estimated Total Annual Burden: 10–15 minutes per respondent, 581 total burden hours.

Issued in Washington, DC, on April 17, 2019.

Ashley Awwad,

Management and Program Analyst, Civil Aerospace Medical Center, Flight Deck Human Factors Research Lab, AAM–510.

[FR Doc. 2019–08110 Filed 4–22–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0319]

Parts and Accessories Necessary for Safe Operation; Agricultural and Food Transporters Conference of American Trucking Associations Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption; correction.

SUMMARY: FMCSA corrects a notice that appeared in the **Federal Register** on April 15, 2019. The Federal Motor Carrier Safety Administration (FMCSA) announced its decision to grant a limited 5-year exemption to the Agricultural and Food Transporters Conference (AFTC) of American Trucking Associations (ATA) to allow certain alternate methods for the securement of agricultural commodities transported. The document contains an incorrect uniform resource locator (URL) where it is available on the FMCSA website.

DATES: This exemption is effective April 23, 2019 and ending April 23, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, Department of Transportation, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366–0676. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION: In the notice from docket 2017- 0139, appearing on page 84 FR 15282 in the **Federal Register** of Monday, April 15, 2015, the following correction is made: on page 15282, column one, under the heading *Terms and Conditions for the Exemption,* correct ''*www.fmcsa.dot.gov/insert.specific.link.when. finalized.*'' to read ''*www.fmcsa.dot.gov/exemptions*''.

Issued on: April 17, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–08132 Filed 4–22–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0100; Notice 1]

Daimler Trucks North America, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Daimler Trucks North America (DTNA) has determined that certain model year (MY) 2010–2018 DTNA motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* DTNA filed a noncompliance report dated September 19, 2018. DTNA subsequently petitioned NHTSA on October 11, 2018, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of DTNA's petition.

DATES: The closing date for comments on the petition is May 23, 2019.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/*. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and considered. All comments and supporting materials received after the closing date will also be filed and considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the

online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview: DTNA has determined that certain MY 2011–2019 DTNA motor vehicles do not fully comply with paragraph S6.2 of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment.* (49 CFR 571.108). DTNA filed a noncompliance report dated September 19, 2018, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. DTNA subsequently petitioned NHTSA on October 11, 2018, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of DTNA petition is published under 49 U.S.C. 30118 and 30120, and does not represent any agency decision or other exercises of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 14,340 MY 2011–2019 Western Star 4700 and 4900, Freightliner Business Class M2, 114SD, 108SD, 122SD, and Coronado motor vehicles, manufactured between May 4, 2010, and August 23, 2018, are potentially involved.

III. Noncompliance: DTNA stated that the noncompliance is that the brake lights, in the subject vehicles, illuminate with Automatic Traction Control (ATC) activation and, therefore, do not meet the requirements specified in S6.2.1 of FMVSS No. 108.

IV. Rule Requirements: Paragraph S6.2.1 of FMVSS No. 108, includes the requirements relevant to this petition:

- No additional lamp, reflective device, or other motor vehicles equipment is permitted to be installed that impairs the effectiveness of lighting equipment required by this FMVSS No. 108.

V. Summary of DTNA Petition: DTNA described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, DTNA submitted the following reasoning:

1. FMVSS No.108 paragraph S6.2.1 states that ''No additional lamp, reflective device, or other motor vehicle equipment is permitted to be installed that impairs the effectiveness of lighting equipment required by'' Standard No. 108. DTNA cited an interpretation response to GM dated May 20, 2000, where NHTSA stated that brake lights should not be illuminated for ATC and concluded that installation of traction control systems, or any other equipment, that activates the stop lamps for purposes other than to indicate that the vehicle is stopping or slowing is prohibited by S5.1.3 and would create a noncompliance with Standard No. 108.

2. ATC events occur during low traction conditions such as snow, ice and mud. The duration of the event can be very short and may not even be noticed by the following driver. If brake light illumination for an ATC event is noticed, it would help to provide early warning of an adverse road condition ahead and encourage the following driver to slow down.

3. Below are several examples of ATC events:

a. Taking Off From a Stop

ATC can be very helpful to a driver when taking off from a stop in low traction conditions. From time to time a vehicle will park with one drive axle wheel end right over a patch of ice, and without ATC, it can be difficult to take off. This happens after the vehicle has been stopped and is trying to move. It seems unlikely that the activation of the brake lights during this ATC event would cause a safety concern to following drivers since the vehicle is stationary.

b. Low Speed

At low speed, hazard warning lights are commonly used to warn other drivers of adverse road conditions such as those that are in effect when an ATC event may occur. Since the hazard lights may already be applied in this case, the addition of momentary brake light activation is unlikely to cause confusion.

NHTSA has stated in Docket No. NHTSA–2000–7312 (referenced below) that the momentary activation of the Center High Mounted Stop Lamp (CHMSL) and hazard warning lamps can augment the message that extra attention should be given to the leading vehicle. This is precisely the situation with low speed ATC events.

c. High Speed

For an ATC event to occur at high speed, it would signify that road conditions have changed rapidly. One way it could happen is if the vehicle has been climbing a hill on dry roads in sub-freezing conditions and crosses a patch of ice. This causes a wheel to lose traction and the ATC applies brake force to that wheel end. The torque is transferred to other wheel ends causing a momentary brake light illumination. If it is a small ice patch, the event may be over and the vehicle may continue on its way. If the ice patch is large, it is imperative that the vehicle slows down to a safe speed under slick conditions and warns others of the impending slowdown. As soon as slick road conditions are noticed and wheels begin to slip, the driver would let up on the throttle.

Brakes are commonly applied causing the brake lights to illuminate when a driver sees or senses a change in road conditions such and an icy patch. Reducing vehicle speed in adverse conditions increases safety, so signaling changing road conditions to following drivers would improve safety and give them the opportunity to increase the following distance. Department of Transportation guidance supports this goal:

- NHTSA's Winter Driving Tips says: ''Drive slowly. It's harder to control or stop your vehicle on a slick or snow-covered road. Increase your following distance enough so that you'll have plenty of time to stop for vehicles ahead of you.''
- FMCSA released CMV Driving Tips; Tip#1 is: Reduce Your Driving Speed in Adverse Road and/or Weather Conditions. ''You should reduce your speed by ⅓ on wet roads and by ½ or more on snow packed roads (*i.e.,* if you would normally be traveling at a speed of 60 mph on dry pavement, then on a wet road you should reduce your speed to 40 mph, and on a snow-packed road you should reduce your speed to 30 mph). When you come upon slick, icy roads you should drive slowly and cautiously and pull off the road if you can no longer safely control the vehicle.''

In addition to the lack of safety impact from brake illumination under the various ATC activation conditions taking off from stop; low speed; or high speed DTNA is not aware of any accidents, injuries, owner complaints or field reports for brake light illumination for ATC events concerning the subject vehicles.

4. DTNA notes that NHTSA has previously granted petitions for decisions of inconsequential noncompliance for lighting requirements where a technical noncompliance exists, but does not create a negative impact on safety.

5. In Docket No. NHTSA–2000–7312 (published on June 18, 2001) a Petition

for inconsequentiality by GM was granted by NHTSA. In this instance, certain models could have unintended CHMSL illumination briefly if the hazard warning lamp switch is depressed to its limit of travel. NHTSA stated: ''The intended use of a hazard warning lamp and the momentary activation of a CHMSL do not provide a conflicting message. The illumination of the CHMSL is intended to signify that the vehicles brakes are being applied and that the vehicle might be decelerating. Hazard warning lamps are intended as a more general message to nearby drivers that extra attention should be given to the vehicle. A brief illumination of the CHMSL while activating the hazard warning lamps would not confuse the intended general message, nor would the brief illumination in the absence of the other brake lamps cause confusion that the brakes were unintentionally applied.''

6. DTNA believes that the same situation exists in the present case, with temporary illumination of the brake lamps during ATC activation. The temporary brake light illumination serves to emphasize the message to following drivers that adverse or unusual road conditions may exist and they should pay close attention.

7. In Docket No. NHTSA–2014–0125 (published on Feb 02, 2018) a Petition for inconsequentiality by GM was granted by NHTSA. In this instance, under certain conditions the parking lamps on the subject vehicles fail to meet the requirement that parking lamps must be activated when headlamps are activated in a steady burning state. NHTSA stated: ''. . . The Agency agrees with GM that in this case this situation would have a low probability of occurrence and, if it should occur, it would neither be long lasting nor likely to occur during a period when parking lamps are generally in use. Importantly, when the noncompliance does occur, other lamps remain functional. The combination of all of the factors, specific to this case, abate the risk to safety.''

DTNA concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

DTNA's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov* and following the online search instructions to locate the docket number listed in the title of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that DTNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after DTNA notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–08124 Filed 4–22–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2018–0100; Notice No. 2019–02]

Hazardous Materials: Emergency Waiver No. 12

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of emergency waiver order.

SUMMARY: PHMSA is issuing an emergency waiver order to railroad carriers waiving certain expedited movement requirements when conducting operations within the Nebraska Severe Winter Storm, Straight-line Winds, And Flooding disaster area. Given the continuing impacts caused by the Nebraska Severe Winter Storm, Straight-line Winds, And Flooding disaster, PHMSA's Administrator has determined that regulatory relief is in the public interest and necessary to ensure the safe transportation in commerce of hazardous materials while railroad carriers conduct operations within the disaster area. This Waiver Order is effective immediately and shall remain in effect for 30 days from the date of issuance.

FOR FURTHER INFORMATION CONTACT: Adam Horsley, Deputy Assistant Chief Counsel for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, telephone: (202) 366–4400.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of 49 U.S.C. 5103(c), the Administrator for the Pipeline and Hazardous Materials Safety Administration (PHMSA), hereby declares that an emergency exists that warrants issuance of a Waiver of 49 CFR 174.14 for operations within the Nebraska Severe Winter Storm, Straight-line Winds, And Flooding disaster area. The Waiver is granted to railroad carriers when conducting operations within the Nebraska Severe Winter Storm, Straight-line Winds, And Flooding disaster area.

On March 21, 2019, the President issued an Emergency Declaration for Nebraska Severe Winter Storm, Straight-line Winds, And Flooding (DR–4420). This Waiver Order covers all areas identified in the declaration, as amended. Pursuant to 49 U.S.C. 5103(c), PHMSA has authority delegated by the Secretary (49 CFR 1.97(b)(3)) to waive compliance with any part of the HMR provided that the grant of the waiver is: (1) In the public interest; (2) not inconsistent with the safety of transporting hazardous materials; and (3) necessary to facilitate the safe movement of hazardous materials into, from, and within an area of a major disaster or emergency that has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

Given the continuing impacts caused by the Nebraska Severe Winter Storm, Straight-line Winds, And Flooding disaster, PHMSA's Administrator has determined that regulatory relief is in the public interest and necessary to ensure the safe transportation in commerce of hazardous materials while railroad carriers conduct operations within the Nebraska Severe Winter Storm, Straight-line Winds, And Flooding disaster area. By execution of this Waiver Order, railroad carriers are excepted from the requirements of 49 CFR 174.14 when conducting operations within the Nebraska Severe Winter Storm, Straight-line Winds, And Flooding disaster area.

This Waiver Order is effective immediately and shall remain in effect for 30 days from the date of issuance.

Issued in Washington, DC, on March 22, 2019.

Drue Pearce,

Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2019–08117 Filed 4–22–19; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Opportunity for the Department of Transportation's National Infrastructure Investments Under the Consolidated Appropriations Act, 2019

AGENCY: Office of the Secretary of Transportation, DOT.

ACTION: Notice of funding opportunity.

SUMMARY: The Consolidated Appropriations Act, 2019 (''FY 2019 Appropriations Act'') appropriated $900 million to be awarded by the Department of Transportation (''DOT'') for National Infrastructure Investments. This appropriation stems from the program funded and implemented pursuant to the American Recovery and Reinvestment Act of 2009 (the ''Recovery Act'') and is known as the Better Utilizing Investments to Leverage Development, or ''BUILD Transportation grants,'' program. Funds for the FY 2019 BUILD Transportation grants program are to be awarded on a competitive basis for surface transportation infrastructure projects that will have a significant local or regional impact. The purpose of this notice is to solicit applications for BUILD Transportation grants.

DATES: Applications must be submitted by 8:00 p.m. E.D.T. on July 15, 2019.

ADDRESSES: Applications must be submitted through *Grants.gov*.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, please contact the BUILD Transportation grants program staff via email at *BUILDgrants@dot.gov,* or call Howard Hill at 202–366–0301. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, DOT will regularly post answers to questions and requests for clarifications as well as information about webinars for further guidance on DOT's website at *www.transportation.gov/BUILDgrants*.

SUPPLEMENTARY INFORMATION: The FY 2019 BUILD Transportation grant program will make awards to surface transportation infrastructure projects that will have a significant impact throughout the country. Each section of this notice contains information and instructions relevant to the application process for these BUILD Transportation grants, and all applicants should read this notice in its entirety so that they have the information they need to submit eligible and competitive applications. For this round of BUILD Transportation grants, the maximum grant award is $25 million, and no more than $90 million can be awarded to a single State, as specified in the FY 2019 Appropriations Act. Per statute, the FY 2019 selection criteria are the same as under the FY 2017 TIGER program, although the description for each criterion has been updated. For FY 2019 BUILD Transportation grants, the definitions of urban and rural areas differ from previous rounds. Additionally, not more than 50 percent of funds will be awarded to projects located in urban and rural areas, respectively.

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A. Program Description

The Consolidated Appropriations Act, 2019 (Pub. L. 116–6, February 15, 2019) (''FY 2019 Appropriations Act'') appropriated $900 million to be awarded by the Department of Transportation (''DOT'') for National Infrastructure Investments. Since this program was created, $7.1 billion has been awarded for capital investments in surface transportation infrastructure over ten rounds of competitive grants. Throughout the program, these discretionary grant awards have supported projects that have a significant local or regional impact.

Like the FY 2017 TIGER program, the FY 2019 BUILD program will also give special consideration to projects which emphasize improved access to reliable, safe, and affordable transportation for communities in rural areas, such as projects that improve infrastructure condition, address public health and safety, promote regional connectivity or facilitate economic growth or competitiveness. Such projects may concurrently invest in broadband to better facilitate productivity, including through the U.S. Department of Agriculture's ReConnect Loan and Grant program, and help rural citizens access opportunities, or promote energy independence to help deliver significant local or regional economic benefit.

B. Federal Award Information

1. Amount Available

The FY 2019 Appropriations Act appropriated $900 million to be awarded by DOT for the BUILD Transportation grants program. The FY 2019 BUILD Transportation grants are for capital investments in surface transportation infrastructure and are to be awarded on a competitive basis for projects that will have a significant local or regional impact. Additionally, the Act allows for up to $15 million (of the $900 million) to be awarded for the planning, preparation or design of eligible projects. DOT is referring to any such awards as BUILD Transportation planning grants. The FY 2019 Appropriations Act also allows DOT to retain up to $27 million of the $900 million for award, oversight and administration of grants and credit assistance made under the program. If this solicitation does not result in the award and obligation of all available funds, DOT may publish additional solicitations.

The FY 2019 Appropriations Act allows up to 20 percent of available funds (or $180 million) to be used by the Department to pay the subsidy and administrative costs of a project receiving credit assistance under the Transportation Infrastructure Finance and Innovation Act of 1998 (''TIFIA'') or Railroad Rehabilitation and Improvement Financing (RRIF) programs, if that use of the FY 2019 BUILD funds would further the purposes of the BUILD Transportation grants program.

2. Award Size

The FY 2019 Appropriations Act specifies that BUILD Transportation grants may not be less than $5 million and not greater than $25 million, except that for projects located in rural areas (as defined in Section C.3.ii.) the award size is $1 million. There is no minimum award size, regardless of location, for BUILD Transportation planning grants.

3. Restrictions on Funding

Pursuant to the FY 2019 Appropriations Act, no more than 10 percent of the funds made available for BUILD Transportation grants (or $90 million) may be awarded to projects in a single State. The Act also directs that not more than 50 percent of the funds provided for BUILD Transportation grants (or $450 million) shall be used for projects located in rural areas with population equal to or less than

200,000, and directs that not more than 50 percent of the funds provided for BUILD Transportation grants (or $450 million) shall be used for projects located in urbanized areas with a population of more than 200,000. Further, DOT must take measures to ensure an equitable geographic distribution of grant funds, an appropriate balance in addressing the needs of urban and rural areas, and investment in a variety of transportation modes.

4. Availability of Funds

The FY 2019 Appropriations Act requires that FY 2019 BUILD Transportation grants funds are available for obligation only through September 30, 2021. Obligation occurs when a selected applicant and DOT enter into a written grant agreement after the applicant has satisfied applicable administrative requirements, including transportation planning and environmental review requirements. Unless authorized by the Department in writing after the Department's announcement of FY 2019 BUILD awards, any costs incurred prior to the Department's obligation of funds for a project are ineligible for reimbursement.[1] All FY 2019 BUILD funds must be expended (the grant obligation must be liquidated or actually paid out to the grantee) by September 30, 2026. After this date, unliquidated funds are no longer available to the project. As part of the review and selection process described in Section E.2., DOT will consider a project's likelihood of being ready to proceed with an obligation of BUILD Transportation grant funds and complete liquidation of these obligations, within the statutory timelines. No waiver is possible for these deadlines.

5. Previous BUILD/TIGER Awards

Recipients of BUILD/TIGER grants may apply for funding to support additional phases of a project previously awarded funds in the BUILD/TIGER program. However, to be competitive, the applicant should demonstrate the extent to which the previously funded project phase has met estimated project schedules and budget, as well as the ability to realize the benefits expected for the project.

C. Eligibility Information

To be selected for a BUILD Transportation grant, an applicant must be an Eligible Applicant and the project must be an Eligible Project.

1. Eligible Applicants

Eligible Applicants for BUILD Transportation grants are State, local, and tribal governments, including U.S. territories, transit agencies, port authorities, metropolitan planning organizations (MPOs), and other political subdivisions of State or local governments.

Multiple States or jurisdictions may submit a joint application and must identify a lead applicant as the primary point of contact and also identify the primary recipient of the award. Each applicant in a joint application must be an Eligible Applicant. Joint applications must include a description of the roles and responsibilities of each applicant and must be signed by each applicant.

2. Cost Sharing or Matching

Per the FY 2019 Appropriations Act, the Federal share of project costs for which an expenditure is made under the BUILD Transportation grant program may not exceed 80 percent for a project located in an urban area.[2] The Secretary may increase the Federal share of costs above 80 percent for a project located in a rural area. Urban area and rural area are defined in Section C.3.ii of this notice.

Non-Federal sources include State funds originating from programs funded by State revenue, local funds originating from State or local revenue-funded programs, or private funds. Toll credits under 23 U.S.C. 120(i) are considered a Federal source under the BUILD program and, therefore, cannot be used to satisfy the statutory cost sharing requirement of a BUILD award. Unless otherwise authorized by statute, non-Federal cost-share may not be counted as the non-Federal share for both the BUILD Transportation grant and another Federal grant program. The Department will not consider previously incurred costs or previously expended or encumbered funds towards the matching requirement for any project. Matching funds are subject to the same Federal requirements described in Section F.2. as awarded funds. If repaid from non-Federal sources, Federal credit assistance is considered non-Federal share.

3. Other

i. Eligible Projects

Eligible projects for BUILD Transportation grants are surface transportation capital projects that include, but are not limited to: (1) Highway, bridge, or other road projects eligible under title 23, United States Code; (2) public transportation projects eligible under chapter 53 of title 49, United States Code; (3) passenger and freight rail transportation projects; (4) port infrastructure investments (including inland port infrastructure and land ports of entry); and (5) intermodal projects.[3]

Improvements to Federally owned facilities are ineligible under the FY 2019 BUILD program. Research, demonstration, or pilot projects are eligible only if they will result in long-term, permanent surface transportation infrastructure that has independent utility as defined in Section C.3.iii.

The FY 2019 Appropriations Act allows up to $15 million for the planning, preparation or design of eligible projects. Activities eligible for funding under BUILD Transportation planning grants are related to the planning, preparation, or design—including environmental analysis, feasibility studies, and other pre-construction activities—of surface transportation capital projects.

Applicants are strongly encouraged to submit applications only for eligible award amounts.

ii. Rural/Urban Definition

For purposes of this notice, a project is designated as urban if it is located within (or on the boundary of) a Census-designated urbanized area[4] that had a population greater than 200,000 in the 2010 Census.[5] If a project is located outside a Census-designated urbanized area with a population greater than 200,000, it is designated as a rural project.

[1] Pre-award costs are only costs incurred directly pursuant to the negotiation and anticipation of the BUILD award where such costs are necessary for efficient and timely performance of the scope of work, as determined by DOT. Costs incurred under an advance construction (23 U.S.C. 115) authorization before the DOT announces that a project is selected for a FY 2019 BUILD award cannot be charged to FY 2019 BUILD funds.

Likewise, costs incurred under an FTA Letter of No Prejudice under Chapter 53 of title 49 U.S.C. before the DOT announces that a project is selected for a FY 2019 BUILD award cannot be charged to FY 2019 BUILD funds.

[2] To meet match requirements, the minimum total project cost for a project located in an urban area must be $6.25 million.

[3] Please note that the Department may use a BUILD Transportation grant to pay for the surface transportation components of a broader project that has non-surface transportation components, and applicants are encouraged to apply for BUILD Transportation grants to pay for the surface transportation components of these projects.

[4] Updated lists of UAs as defined by the Census Bureau are available on the Census Bureau website at *http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/*.

[5] See *www.transportation.gov/BUILDgrants* for a list of UAs.

Rural and urban definitions differ in some other DOT programs, including TIFIA.

A project located in both an urban and a rural area will be designated as urban if the majority of the project's costs will be spent in urban areas. Conversely, a project located in both an urban area and a rural area will be designated as rural if the majority of the project's costs will be spent in rural areas.

This definition affects four aspects of the program: (1) Not more than $450 million of the funds provided for BUILD Transportation grants are to be used for projects in rural areas; (2) not more than $450 million of the funds provided for BUILD Transportation grants are to be used for projects in urban areas; (3) for a project in a rural area the minimum award is $1 million; and (4) the Secretary may increase the Federal share above 80 percent to pay for the costs of a project in a rural area.

iii. Project Components

An application may describe a project that contains more than one component, and may describe components that may be carried out by parties other than the applicant. DOT may award funds for a component, instead of the larger project, if that component (1) independently meets minimum award amounts described in Section B and all eligibility requirements described in Section C; (2) independently aligns well with the selection criteria specified in Section E; and (3) meets National Environmental Policy Act (NEPA) requirements with respect to independent utility. Independent utility means that the component will represent a transportation improvement that is usable and represents a reasonable expenditure of DOT funds even if no other improvements are made in the area, and will be ready for intended use upon completion of that component's construction. All project components that are presented together in a single application must demonstrate a relationship or connection between them. (See Section D.2.iv. for Required Approvals).

Applicants should be aware that, depending upon the relationship between project components and applicable Federal law, DOT funding of only some project components may make other project components subject to Federal requirements as described in Section F.2.

DOT strongly encourages applicants to identify in their applications the project components that have independent utility and separately detail costs and requested BUILD Transportation grant funding for those components. If the application identifies one or more independent project components, the application should clearly identify how each independent component addresses selection criteria and produces benefits on its own, in addition to describing how the full proposal of which the independent component is a part addresses selection criteria.

iv. Application Limit

Each lead applicant may submit no more than three applications. Unrelated project components should not be bundled in a single application for the purpose of adhering to the limit. If a lead applicant submits more than three applications as the lead applicant, only the first three received will be considered.

D. Application and Submission Information

1. Address

Applications must be submitted to *Grants.gov*. Instructions for submitting applications can be found at *www.transportation.gov/BUILDgrants* along with specific instructions for the forms and attachments required for submission.

2. Content and Form of Application Submission

The application must include the Standard Form 424 (Application for Federal Assistance), cover page, and the Project Narrative. More detailed information about the Project Narrative follows. Applicants should also complete and attach to their application the ''BUILD 2019 Project Information'' form available at *www.transportation.gov/BUILDgrants*.

The Department recommends that the project narrative follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

I. Project Description	See D.2.i.
II. Project Location	See D.2.ii.
III. Grant Funds, Sources and Uses of all Project Funding.	See D.2.iii.
IV. Selection Criteria	See D.2.iv. and E.1.i.
V. Project Readiness	See D.2.v. and E.1.ii.
VI. Benefit Cost Analysis	See D.2.vi. and E.1.iii.

The project narrative should include the information necessary for the Department to determine that the project satisfies project requirements described in Sections B and C and to assess the selection criteria specified in Section E.1. To the extent practicable, applicants should provide supporting data and documentation in a form that is directly verifiable by the Department. The Department may ask any applicant to supplement data in its application but expects applications to be complete upon submission.

In addition to a detailed statement of work, detailed project schedule, and detailed project budget, the project narrative should include a table of contents, maps and graphics, as appropriate, to make the information easier to review. The Department recommends that the project narrative be prepared with standard formatting preferences (a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins). The project narrative may not exceed 30 pages in length, excluding cover pages and table of contents. The only substantive portions that may exceed the 30-page limit are documents supporting assertions or conclusions made in the 30-page project narrative. If possible, website links to supporting documentation should be provided rather than copies of these supporting materials. If supporting documents are submitted, applicants should clearly identify within the project narrative the relevant portion of the project narrative that each supporting document supports. The Department recommends using appropriately descriptive file names (*e.g.,* ''Project Narrative,'' ''Maps,'' ''Memoranda of Understanding and Letters of Support,'' etc.) for all attachments. DOT recommends applications include the following sections:

i. Project Description

The first section of the application should provide a concise description of the project, the transportation challenges that it is intended to address, and how it will address those challenges. This section should discuss the project's history, including a description of any previously completed components. The applicant may use this section to place the project into a broader context of other transportation infrastructure investments being pursued by the project sponsor, and, if applicable, how it will benefit communities in rural areas.

ii. Project Location

This section of the application should describe the project location, including a detailed geographical description of the proposed project, a map of the project's location and connections to existing transportation infrastructure, and geospatial data describing the project location. If the project is located within the boundary of a Census-designated urbanized area, the

application should identify that urbanized area.

iii. Grant Funds, Sources and Uses of Project Funds

This section of the application should describe the project's budget. This budget should not include any previously incurred expenses. At a minimum, it should include:

(A) Project costs;

(B) For all funds to be used for eligible project costs, the source and amount of those funds;

(C) For non-Federal funds to be used for eligible project costs, documentation of funding commitments should be referenced here and included as an appendix to the application;

(D) For Federal funds to be used for eligible project costs, the amount, nature, and source of any required non-Federal match for those funds; and

(E) A budget showing how each source of funds will be spent. The budget should show how each funding source will share in each major construction activity, and present that data in dollars and percentages. Funding sources should be grouped into three categories: Non-Federal; BUILD; and other Federal. If the project contains individual components, the budget should separate the costs of each project component. If the project will be completed in phases, the budget should separate the costs of each phase. The budget detail should sufficiently demonstrate that the project satisfies the statutory cost-sharing requirements described in Section C.2.

In addition to the information enumerated above, this section should provide complete information on how all project funds may be used. For example, if a particular source of funds is available only after a condition is satisfied, the application should identify that condition and describe the applicant's control over whether it is satisfied. Similarly, if a particular source of funds is available for expenditure only during a fixed time period, the application should describe that restriction. Complete information about project funds will ensure that the Department's expectations for award execution align with any funding restrictions unrelated to the Department, even if an award differs from the applicant's request.

iv. Selection Criteria

This section of the application should demonstrate how the project aligns with the Criteria described in Section E.1 of this notice. The Department encourages applicants to either address each criterion or expressly state that the project does not address the criterion. Applicants are not required to follow a specific format, but the outline suggested below, which addresses each criterion separately, promotes a clear discussion that assists project evaluators. To minimize redundant information in the application, the Department encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application. The guidance in this section is about how the applicant should organize their application. Guidance describing how the Department will evaluate projects against the Selection Criteria is in Section E.1 of this notice. Applicants also should review that section before considering how to organize their application.

(1) Primary Selection Criteria

(a) Safety

This section of the application should describe the anticipated outcomes of the project that support the Safety criterion (described in Section E.1.i.(a) of this notice). The applicant should include information on, and to the extent possible, quantify, how the project would improve safety outcomes within the project area or wider transportation network, to include how the project will reduce the number, rate, and consequences of transportation-related accidents, serious injuries, and fatalities. If applicable, the applicant should also include information on how the project will eliminate unsafe grade crossings or contribute to preventing unintended releases of hazardous materials.

(b) State of Good Repair

This section of the application should describe how the project will contribute to a state of good repair by improving the condition or resilience of existing transportation facilities and systems (described in Section E.1.i.(b) of this notice), including the project's current condition and how the proposed project will improve it, and any estimates of impacts on long-term cost structures or overall life-cycle costs. If the project will contribute to a state of good repair of transportation infrastructure that supports border security, the applicant should describe how.

(c) Economic Competitiveness

This section of the application should describe how the project will support the Economic Competitiveness criterion (described in Section E.1.i.(c) of this notice). The applicant should include information about expected impacts of the project on the movement of goods and people, including how the project increases the efficiency of movement and thereby reduces costs of doing business, improves local and regional freight connectivity to the national and global economy, reduces burdens of commuting, and improves overall well-being. The applicant should describe the extent to which the project contributes to the functioning and growth of the economy, including the extent to which the project addresses congestion or freight connectivity, bridges service gaps in rural areas, or promotes the expansion of private economic development including in Opportunity Zones.

(d) Environmental Sustainability

This section of the application should describe how the project addresses the environmental sustainability criterion (described in Section E.1.i.(d) of this notice). Applicants are encouraged to provide quantitative information, including baseline information that demonstrates how the project will reduce energy consumption, reduce stormwater runoff, or achieve other benefits for the environment such as brownfield redevelopment.

(e) Quality of Life

This section should describe how the project increases transportation choices for individuals, expands access to essential services for people in communities across the United States, improves connectivity for citizens to jobs, health care, and other critical destinations, particularly for rural communities, or otherwise addresses the quality of life criterion (described in Section E.1.i.(e) of this notice). If construction of the transportation project will allow concurrent installation of fiber or other broadband deployment as an essential service, the applicant should describe those activities and how they support quality of life. Unless the concurrent activities support transportation, they will not be eligible for reimbursement.

(2) Secondary Selection Criteria

(a) Innovation

This section of the application should describe innovative strategies used and the anticipated benefits of using those strategies, including those corresponding to three categories (described in Section E.1.i.(f) of this notice): (i) Innovative Technologies, (ii) Innovative Project Delivery, or (iii) Innovative Financing.

(i) Innovative Technologies

If an applicant is proposing to adopt innovative safety approaches or technology, the application should demonstrate the applicant's capacity to implement those innovations, the applicant's understanding of applicable Federal requirements and whether the innovations may require extraordinary permitting, approvals, exemptions, waivers, or other procedural actions, and the effects of those innovations on the project delivery timeline.

If an applicant is proposing to deploy innovative traveler information systems or technologies as part of the surface transportation capital project, including work zone data exchanges or related data exchanges, the application should demonstrate the applicant's capacity to implement these innovations, the applicant's understanding of applicable data standards, and whether the proposed innovations will advance safety or other benefits during and after project completion.

If an applicant is proposing to deploy autonomous vehicles or other innovative motor vehicle technology, the application should demonstrate that all vehicles will comply with applicable safety requirements, including those administered by the National Highway Traffic Safety Administration (NHTSA) and Federal Motor Carrier Safety Administration (FMCSA). Specifically, the application should show that vehicles acquired for the proposed project will comply with applicable Federal Motor Vehicle Safety Standards (FMVSS) and Federal Motor Carrier Safety Regulations (FMCSR). If the vehicles may not comply, the application should either (1) show that the vehicles and their proposed operations are within the scope of an exemption or wavier that has already been granted by NHTSA, FMCSA, or both agencies or (2) directly address whether the project will require exemptions or waivers from the FMVSS, FMCSR, or any other regulation and, if the project will require exemptions or waivers, present a plan for obtaining them.

(ii) Innovative Project Delivery

If an applicant plans to use innovative approaches to project delivery or is located in a State with NEPA delegation authority, applicants should describe those project delivery methods and how they are expected to improve the efficiency of the project development or expedite project delivery.

If an applicant is proposing to use SEP–14 or SEP–15 (as described in section E.1.i.(f) of this notice) the applicant should describe that proposal. The applicant should also provide sufficient information for evaluators to confirm that the applicant's proposal would meet the requirements of the specific experimental authority program.[6]

(iii) Innovative Financing

If an applicant plans to incorporate innovative funding or financing, the applicant should describe the funding or financing approach, including a description of all activities undertaken to pursue private funding or financing for the project and the outcomes of those activities.

(b) Partnership

This section of the application should include information to assess the partnership criterion (described in Section E.1.i.(g) of this notice) including a list of all project parties and details about the proposed grant recipient and other public and private parties who are involved in delivering the project. This section should also describe efforts to collaborate among stakeholders, including with the private sector. Applications for projects involving other Federal agencies, or requiring action from other Federal agencies, should demonstrate commitment and involvement of those agencies. For example, projects involving border infrastructure should demonstrate evidence of concurrent investment from U.S. Customs and Border Patrol, U.S. Department of State, and other relevant Federal agencies; relevant port projects should demonstrate alignment with U.S. Army Corps of Engineers investment strategies.

v. Project Readiness

This section of the application should include information that, when considered with the project budget information presented elsewhere in the application, is sufficient for the Department to evaluate whether the project is reasonably expected to begin construction in a timely manner. To assist the Department's project readiness assessment, the applicant should provide the information requested on technical feasibility, project schedule, project approvals, and project risks, each of which is described in greater detail in the following sections. Applicants are not required to follow the specific format described here, but this organization, which addresses each relevant aspect of project readiness, promotes a clear discussion that assists project evaluators. To minimize redundant information in the application, the Department encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application.

The guidance here is about what information applicants should provide and how the applicant should organize their application. Guidance describing how the Department will evaluate a project's readiness is described in Section E.1.ii of this notice. Applicants should review that section when considering how to organize their application.

(a) Technical Feasibility

The applicant should demonstrate the technical feasibility of the project with engineering and design studies and activities; the development of design criteria and/or a basis of design; the basis for the cost estimate presented in the BUILD application, including the identification of contingency levels appropriate to its level of design; and any scope, schedule, and budget risk-mitigation measures. Applicants should include a detailed statement of work that focuses on the technical and engineering aspects of the project and describes in detail the project to be constructed.

(b) Project Schedule

The applicant should include a detailed project schedule that identifies all major project milestones. Examples of such milestones include State and local planning approvals (*e.g.,* programming on the Statewide Transportation Improvement Program); start and completion of NEPA and other Federal environmental reviews and approvals including permitting; design completion; right of way acquisition; approval of plans, specifications and estimates; procurement; State and local approvals; project partnership and implementation agreements, including agreements with railroads; and construction. The project schedule should be sufficiently detailed to demonstrate that:

(1) All necessary activities will be complete to allow BUILD Transportation grant funds to be obligated sufficiently in advance of the statutory deadline (September 30, 2021 for FY 2019 funds), and that any unexpected delays will not put the funds at risk of expiring before they are obligated;

(2) the project can begin construction quickly upon obligation of grant funds

[6] SEP–14 information is available at *https://www.fhwa.dot.gov/programadmin/contracts/sep_a.cfm.* SEP–15 information is available at *https://www.fhwa.dot.gov/ipd/p3/toolkit/usdot/sep15/implementation_procedure/.*

and that those funds will be spent expeditiously once construction starts, with all funds expended by September 30, 2026; and

(3) all real property and right-of-way acquisition will be completed in a timely manner in accordance with 49 CFR part 24, 23 CFR part 710, and other applicable legal requirements or a statement that no acquisition is necessary.

(c) Required Approvals

(1) Environmental Permits and Reviews. The application should demonstrate receipt (or reasonably anticipated receipt) of all environmental approvals and permits necessary for the project to proceed to construction on the timeline specified in the project schedule and necessary to meet the statutory obligation deadline, including satisfaction of all Federal, State and local requirements and completion of the NEPA process. Specifically, the application should include:

(a) Information about the NEPA status of the project. If the NEPA process is complete, an applicant should indicate the date of completion, and provide a website link or other reference to the final Categorical Exclusion, Finding of No Significant Impact, Record of Decision, and any other NEPA documents prepared. If the NEPA process is underway, but not complete, the application should detail the type of NEPA review underway, where the project is in the process, and indicate the anticipated date of completion of all milestones and of the final NEPA determination. If the last agency action with respect to NEPA documents occurred more than three years before the application date, the applicant should describe why the project has been delayed and include a proposed approach for verifying and, if necessary, updating this material in accordance with applicable NEPA requirements.

(b) Information on reviews, approvals, and permits by other agencies. An application should indicate whether the proposed project requires reviews or approval actions by other agencies,[7] indicate the status of such actions, and provide detailed information about the status of those reviews or approvals and should demonstrate compliance with any other applicable Federal, State or local requirements, and when such approvals are expected. Applicants should provide a website link or other reference to copies of any reviews, approvals, and permits prepared.

(c) Environmental studies or other documents, preferably through a website link, that describe in detail known project impacts, and possible mitigation for those impacts.

(d) A description of discussions with the appropriate DOT operating administration field or headquarters office regarding the project's compliance with NEPA and other applicable Federal environmental reviews and approvals.

(e) A description of public engagement about the project that has occurred, including details on the degree to which public comments and commitments have been integrated into project development and design.

(2) State and Local Approvals. The applicant should demonstrate receipt of State and local approvals on which the project depends, such as State and local environmental and planning approvals and Statewide Transportation Improvement Program (STIP) or (Transportation Improvement Program) TIP funding. Additional support from relevant State and local officials is not required; however, an applicant should demonstrate that the project has broad public support.

(3) Federal Transportation Requirements Affecting State and Local Planning. The planning requirements applicable to the relevant operating administration apply to all BUILD Transportation grant projects,[8] including intermodal projects located at airport facilities.[9] Applicants should demonstrate that a project that is required to be included in the relevant State, metropolitan, and local planning documents has been or will be included in such documents. If the project is not included in a relevant planning document at the time the application is submitted, the applicant should submit a statement from the appropriate planning agency that actions are underway to include the project in the relevant planning document.

To the extent possible, freight projects should be included in a State Freight Plan and supported by a State Freight Advisory Committee (49 U.S.C. 70201, 70202), if these exist. Applicants should provide links or other documentation supporting this consideration.

Because projects have different schedules, the construction start date for each BUILD Transportation grant must be specified in the project-specific agreements signed by relevant operating administration and the grant recipients, based on critical path items that applicants identify in the application and will be consistent with relevant State and local plans.

(d) Assessment of Project Risks and Mitigation Strategies

Project risks, such as procurement delays, environmental uncertainties, increases in real estate acquisition costs, uncommitted local match, unavailability of vehicles that either comply with Federal Motor Vehicle Safety Standards or are exempt from Federal Motor Vehicle Safety Standards in a manner that allows for their legal acquisition and deployment, unavailability of domestically manufactured equipment, or lack of legislative approval, affect the likelihood of successful project start and completion. The applicant should identify all material risks to the project and the strategies that the lead applicant and any project partners have undertaken or will undertake in order to mitigate those risks. The applicant should assess the greatest risks to the project and identify how the project parties will mitigate those risks.

[7] Projects that may impact protected resources such as wetlands, species habitat, cultural or historic resources require review and approval by Federal and State agencies with jurisdiction over those resources.

[8] Under 23 U.S.C. 134 and 135, all projects requiring an action by FHWA must be in the applicable plan and programming documents (*e.g.,* metropolitan transportation plan, transportation improvement program (TIP) and statewide transportation improvement program (STIP)). Further, in air quality non-attainment and maintenance areas, all regionally significant projects, regardless of the funding source, must be included in the conforming metropolitan transportation plan and TIP. Inclusion in the STIP is required under certain circumstances. To the extent a project is required to be on a metropolitan transportation plan, TIP, and/or STIP, it will not receive a BUILD Transportation grant until it is included in such plans. Plans that do not currently include the awarded BUILD project can be amended by the State and MPO. Projects that are not required to be in long range transportation plans, STIPs, and TIPs will not need to be included in such plans in order to receive a BUILD Transportation grant. Port, freight rail, and intermodal projects are not required to be on the State Rail Plans called for in the Passenger Rail Investment and Improvement Act of 2008, or in a State Freight Plan as described in the FAST Act. However, applicants seeking funding for freight projects are encouraged to demonstrate that they have done sufficient planning to ensure that projects fit into a prioritized list of capital needs and are consistent with long-range goals. Means of demonstrating this consistency would include whether the project is in a TIP or a State Freight Plan that conforms to the requirements 49 U.S.C. 70202 prior to the start of construction. Port planning guidelines are available at StrongPorts.gov.

[9] Projects at grant obligated airports must be compatible with the FAA-approved Airport Layout Plan, as well as aeronautical surfaces associated with the landing and takeoff of aircraft at the airport. Additionally, projects at an airport: Must comply with established Sponsor Grant Assurances, including (but not limited to) requirements for non-exclusive use facilities, consultation with users, consistency with local plans including development of the area surrounding the airport, and consideration of the interest of nearby communities, among others; and must not adversely affect the continued and unhindered access of passengers to the terminal.

If an applicant anticipates pursuing a waiver for relevant domestic preference laws, the applicant should describe steps that have been or will be taken to maximize the use of domestic goods, products, and materials in constructing their project.

To the extent the applicant is unfamiliar with the Federal program, the applicant should contact the appropriate DOT operating administration field or headquarters offices, as found in contact information at *www.transportation.gov/BUILDgrants,* for information on the pre-requisite steps to obligate Federal funds in order to ensure that their project schedule is reasonable and that there are no risks of delays in satisfying Federal requirements.

BUILD Transportation planning grant applicants should describe their capacity to successfully implement the proposed activities in a timely manner.

vi. Benefit Cost Analysis

This section describes the recommended approach for the completion and submission of a benefit-cost analysis (BCA) as an appendix to the Project Narrative. The results of the analysis should be summarized in the Project Narrative directly, as described in Section D.2.

The appendix should provide present value estimates of a project's benefits and costs relative to a no-build baseline. To calculate present values, applicants should apply a real discount rate (*i.e.,* the discount rate net of the inflation rate) of 7 percent per year to the project's streams of benefits and costs. The purpose of the BCA is to enable the Department to evaluate the project's cost-effectiveness by estimating a benefit-cost ratio and calculating the magnitude of net benefits for the project.

The primary economic benefits from projects eligible for BUILD Transportation grants are likely to include savings in travel time costs, vehicle or terminal operating costs, and safety costs for both existing users of the improved facility and new users who may be attracted to it as a result of the project. Reduced damages from vehicle emissions and savings in maintenance costs to public agencies may also be quantified. Applicants may describe other categories of benefits in the BCA that are more difficult to quantify and value in economic terms, such as improving the reliability of travel times or improvements to the existing human and natural environments (such as increased connectivity, improved public health, storm water runoff mitigation, and noise reduction), while also providing numerical estimates of the magnitude and timing of each of these additional impacts wherever possible. Any benefits claimed for the project, both quantified and unquantified, should be clearly tied to the expected outcomes of the project.

The BCA should include the full costs of developing, constructing, operating, and maintaining the proposed project, as well as the expected timing or schedule for costs in each of these categories. The BCA may also consider the present discounted value of any remaining service life of the asset at the end of the analysis period. The costs and benefits that are compared in the BCA should also cover the same project scope.

The BCA should carefully document the assumptions and methodology used to produce the analysis, including a description of the baseline, the sources of data used to project the outcomes of the project, and the values of key input parameters. Applicants should provide all relevant files used for their BCA, including any spreadsheet files and technical memos describing the analysis (whether created in-house or by a contractor). The spreadsheets and technical memos should present the calculations in sufficient detail and transparency to allow the analysis to be reproduced by DOT evaluators. Detailed guidance for estimating some types of quantitative benefits and costs, together with recommended economic values for converting them to dollar terms and discounting to their present values, are available in the Department's guidance for conducting BCAs for projects seeking funding under the BUILD Transportation grant program (see *www.transportation.gov/BUILDgrants/additional-guidance*).

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant must: (1) Be registered in SAM before submitting its application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. The Department may not make a BUILD Transportation grant to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Department is ready to make a BUILD Transportation grant, the Department may determine that the applicant is not qualified to receive a BUILD Transportation grant and use that determination as a basis for making a BUILD Transportation grant to another applicant.

4. Submission Dates and Times

i. Deadline

Applications must be submitted by 8:00 p.m. E.D.T. on July 15, 2019.

To submit an application through *Grants.gov*, applicants must:

(1) Obtain a Data Universal Numbering System (DUNS) number;

(2) Register with the System for Award Management (SAM) at *www.SAM.gov;*

(3) Create a *Grants.gov* username and password; and

(4) The E-Business Point of Contact (POC) at the applicant's organization must respond to the registration email from *Grants.gov* and login at *Grants.gov* to authorize the applicant as the Authorized Organization Representative (AOR). Please note that there can be more than one AOR for an organization.

Please note that the *Grants.gov* registration process usually takes 2–4 weeks to complete and that the Department will not consider late applications that are the result of failure to register or comply with *Grants.gov* applicant requirements in a timely manner. For information and instruction on each of these processes, please see instructions at *http://www.grants.gov/web/grants/applicants/applicant-faqs.html*. If applicants experience difficulties at any point during the registration or application process, please call the *Grants.gov* Customer Service Support Hotline at 1(800) 518–4726, Monday-Friday from 7:00 a.m. to 9:00 p.m. EST.

ii. Consideration of Applications:

Only applicants who comply with all submission deadlines described in this notice and electronically submit valid applications through *Grants.gov* will be eligible for award. Applicants are strongly encouraged to make submissions in advance of the deadline.

iii. Late Applications

Applicants experiencing technical issues with *Grants.gov* that are beyond the applicant's control must contact *BUILDgrants@dot.gov* prior to the application deadline with the user name of the registrant and details of the technical issue experienced. The applicant must provide:

(1) Details of the technical issue experienced;

(2) Screen capture(s) of the technical issues experienced along with corresponding *Grants.gov* ''Grant tracking number;''

(3) The ''Legal Business Name'' for the applicant that was provided in the SF–424;

(4) The AOR name submitted in the SF–424;

(5) The DUNS number associated with the application; and

(6) The *Grants.gov* Help Desk Tracking Number

To ensure a fair competition of limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its website; (3) failure to follow all instructions in this notice of funding opportunity; and (4) technical issues experienced with the applicant's computer or information technology environment. After the Department reviews all information submitted and contact the *Grants.gov* Help Desk to validate reported technical issues, DOT staff will contact late applicants to approve or deny a request to submit a late application through *Grants.gov*. If the reported technical issues cannot be validated, late applications will be rejected as untimely.

E. Application Review Information

1. Criteria

This section specifies the criteria that DOT will use to evaluate and award applications for BUILD Transportation grants. The criteria incorporate the statutory eligibility requirements for this program, which are specified in this notice as relevant. Projects will also be evaluated for demonstrated project readiness and benefits and costs.

i. Primary Selection Criteria

Applications that do not demonstrate a potential for moderate long-term benefits based on these criteria will not proceed in the evaluation process. DOT does not consider any selection criterion more important than the others. BUILD Transportation planning grant applications will be evaluated against the same criteria as capital grant applications. While the FY 2019 Appropriations Act allows funding solely for pre-construction activities, the Department will prioritize FY 2019 BUILD Transportation grant program funding for projects that propose to move into the construction phase within the period of obligation. Accordingly, applications for BUILD Transportation planning grants will be less competitive than capital grants.

The selection criteria, which will receive equal consideration, are:

(a) Safety

The Department will assess the project's ability to foster a safe transportation system for the movement of goods and people. The Department will consider the projected impacts on the number, rate, and consequences of crashes, fatalities and injuries among transportation users; the project's contribution to the elimination of highway/rail grade crossings, or the project's contribution to preventing unintended releases of hazardous materials.

(b) State of Good Repair

The Department will assess whether and to what extent: (1) The project is consistent with relevant plans to maintain transportation facilities or systems in a state of good repair and address current and projected vulnerabilities; (2) if left unimproved, the poor condition of the asset will threaten future transportation network efficiency, mobility of goods or accessibility and mobility of people, or economic growth; (3) the project is appropriately capitalized up front and uses asset management approaches that optimize its long-term cost structure; (4) a sustainable source of revenue is available for operations and maintenance of the project and the project will reduce overall life-cycle costs; (5) the project will maintain or improve transportation infrastructure that supports border security functions; and (6) the project includes a plan to maintain the transportation infrastructure in a state of good repair. The Department will prioritize projects that ensure the good condition of transportation infrastructure, including rural transportation infrastructure, that support commerce and economic growth.

(c) Economic Competitiveness

The Department will assess whether the project will (1) decrease transportation costs and improve access, especially for rural communities or communities in Opportunity Zones,[10] through reliable and timely access to employment centers and job opportunities; (2) improve long-term efficiency, reliability or costs in the movement of workers or goods; (3) increase the economic productivity of land, capital, or labor, including assets in Opportunity Zones; (4) result in long-term job creation and other economic opportunities; or (5) help the United States compete in a global economy by facilitating efficient and reliable freight movement.

Projects that address congestion in major urban areas, particularly those that do so through the use of congestion pricing or the deployment of advanced technology, projects that bridge gaps in service in rural areas, and projects that attract private economic development, all support local or regional economic competitiveness.

(d) Environmental Sustainability

The Department will consider the extent to which the project improves energy efficiency, reduces dependence on oil, reduces congestion-related emissions, improves water quality, avoids and mitigates environmental impacts and otherwise benefits the environment, including through alternative right of way uses demonstrating innovative ways to improve or streamline environmental reviews while maintaining the same outcomes. The Department will assess the project's ability to: (i) reduce energy use and air or water pollution through congestion mitigation strategies; (ii) avoid adverse environmental impacts to air or water quality, wetlands, and endangered species; or (iii) provide environmental benefits, such as brownfield redevelopment, ground water recharge in areas of water scarcity, wetlands creation or improved habitat connectivity, and stormwater mitigation.

(e) Quality of Life

The Department will consider the extent to which the project: (i) Increases transportation choices for individuals to provide more freedom on transportation decisions; (ii) expands access to essential services for communities across the United States, particularly for rural communities; or (iii) improves connectivity for citizens to jobs, health care, and other critical destinations, particularly for rural communities. Americans living in rural areas and on Tribal lands continue to disproportionately lack access and connectivity, and the Department will consider whether and the extent to which the construction of the transportation project will allow concurrent installation of fiber or other broadband deployment as an essential service.

ii. Secondary Selection Criteria

(a) Innovation

The Department will assess the extent to which the applicant uses innovative strategies, including: (i) Innovative technologies, (ii) innovative project delivery, or (iii) innovative financing.

[10] See *https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx* for more information on Opportunity Zones.

(i) Innovative Technologies

DOT will assess innovative approaches to transportation safety, particularly in relation to automated vehicles and the detection, mitigation, and documentation of safety risks. When making BUILD Transportation grant award decisions, the Department will consider any innovative safety approaches proposed by the applicant, particularly projects which incorporate innovative design solutions, enhance the environment for automated vehicles, or use technology to improve the detection, mitigation, and documentation of safety risks. Innovative safety approaches may include, but are not limited to:

- Conflict detection and mitigation technologies (*e.g.,* intersection alerts and signal prioritization);
- Dynamic signaling, smart traffic signals, or pricing systems to reduce congestion;
- Traveler information systems, to include work zone data exchanges;
- Signage and design features that facilitate autonomous or semi-autonomous vehicle technologies;
- Applications to automatically capture and report safety-related issues (*e.g.,* identifying and documenting near-miss incidents); and
- Cybersecurity elements to protect safety-critical systems.

For innovative safety proposals, the Department will evaluate safety benefits that those approaches could produce and the broader applicability of the potential results. DOT will also assess the extent to which the project uses innovative technology that supports surface transportation to significantly enhance the operational performance of the transportation system.

Innovative technologies include: Broadband deployment and the installation of high-speed networks concurrent with the project construction; connecting Intelligent Transportation System (ITS) infrastructure; and providing direct fiber connections that support surface transportation to public and private entities, which can provide a platform and catalyst for growth of rural communities. The Department will consider whether and the extent to which the construction of the transportation project will allow concurrent broadband deployment and the installation of high-speed networks.

(ii) Innovative Project Delivery

DOT will consider the extent to which the project utilizes innovative practices in contracting (such as public-private partnerships), congestion management, asset management, or long-term operations and maintenance.

The Department also seeks projects that employ innovative approaches to improve the efficiency and effectiveness of the environmental permitting and review to accelerate project delivery and achieve improved outcomes for communities and the environment. The Department's objective is to achieve timely and consistent environmental review and permit decisions. Accordingly, projects from States with NEPA assignment authority under 23 U.S.C. 327 are considered to use an innovative approach to project delivery. Participation in innovative project delivery approaches will not remove any statutory requirements affecting project delivery.

While BUILD Transportation grant award recipients are not required to employ innovative approaches, the Department encourages BUILD Transportation grant applicants to describe innovative project delivery methods for proposed projects.

Additionally, DOT is interested in projects that apply innovative strategies to improve the efficiency of project development or expedite project delivery by using FHWA's Special Experimental Project No. 14 (SEP–14) and Special Experimental Project No. 15 (SEP–15). Under SEP–14 and SEP–15, FHWA may waive statutory and regulatory requirements under title 23 on a project-by-project basis to explore innovative processes that could be adopted through legislation. This experimental authority is available to test changes that would improve the efficiency of project delivery in a manner that is consistent with the purposes underlying existing requirements; it is not available to frustrate the purposes of existing requirements.

When making BUILD Transportation grant award decisions, the Department will consider the applicant's proposals to use SEP–14 or SEP–15, whether the proposals are consistent with the objectives and requirements of those programs, the potential benefits that experimental authorities or waivers might provide to the project, and the broader applicability of potential results. The Department is not replacing the application processes for SEP–14 or SEP–15 with this notice or the BUILD Transportation grant program application. Instead, it seeks detailed expressions of interest in those programs. If selected for an BUILD Transportation grant award, the applicant would need to satisfy the relevant programs' requirements and complete the appropriate application processes. Selection for a BUILD Transportation grant award does not mean a project's SEP–14 or SEP–15 proposal has been approved. The Department will make a separate determination in accordance with those programs' processes on the appropriateness of a waiver.

(iii) Innovative Financing

DOT will assess the extent to which the project incorporates innovations in transportation funding and finance through both traditional and innovative means, including by using private sector funding or financing and recycled revenue from the competitive sale or lease of publicly owned or operated assets.

(b) Partnership

The Department will consider the extent to which projects demonstrate strong collaboration among a broad range of stakeholders. Projects with strong partnership typically involve multiple partners in project development and funding, such as State and local governments, other public entities, and private or nonprofit entities. DOT will consider applicants that partner with State, local, or private entities for the completion and operation of transportation infrastructure to have strong partnership. DOT will also assess the extent to which the project application demonstrates collaboration among neighboring or regional jurisdictions to achieve local or regional benefits. In the context of public-private partnerships, DOT will assess the extent to which partners are encouraged to ensure long-term asset performance, such as through pay-for-success approaches.

DOT will also consider the extent to which projects include partnerships that bring together diverse transportation agencies or are supported, financially or otherwise, by other stakeholders that are pursuing similar objectives. For example, DOT will consider the extent to which transportation projects are coordinated with economic development, housing, water and waste infrastructure, power and electric infrastructure, broadband and land use plans and policies or other public service efforts.

ii. Demonstrated Project Readiness

During application evaluation, the Department may consider project readiness to assess the likelihood of a successful project. In that analysis, the Department will consider significant risks to successful completion of a project, including risks associated with environmental review, permitting,

technical feasibility, funding, and the applicant's capacity to manage project delivery. Risks do not disqualify projects from award, but competitive applications clearly and directly describe achievable risk mitigation strategies. A project with mitigated risks or with a risk mitigation plan is more competitive than a comparable project with unaddressed risks.

iii. Project Costs and Benefits

The Department may consider the costs and benefits of projects seeking BUILD Transportation grant funding. To the extent possible, the Department will rely on quantitative, data-supported analysis to assess how well a project addresses this criterion, including an assessment of the project's estimated benefit-cost ratio and net quantifiable benefits based on the applicant-supplied BCA described in Section D.2.vi.

iv. Additional Considerations

The FY 2019 Appropriations Act requires the Department to consider contributions to geographic diversity among recipients, including the need for a balance between the needs of rural and urban communities when selecting BUILD Transportation grant awards.

2. Review and Selection Process

DOT reviews all eligible applications received by the deadline. The BUILD Transportation grants review and selection process consists of at least Technical Review and Senior Review. In the Technical Review, teams comprising staff from the Office of the Secretary (OST) and operating administrations review all eligible applications and rate projects based on how well the projects align with the selection criteria. The Senior Review Team, which includes senior leadership from OST and the operating administrations, determines which projects to advance to the Secretary as Highly Rated. The FY 2019 Appropriations Act mandated BUILD Transportation grant awards by November 12, 2019. The Secretary selects from the Highly Rated projects for final awards.

3. Additional Information

Prior to award, each selected applicant will be subject to a risk assessment as required by 2 CFR 200.205. The Department must review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS). An applicant may review information in FAPIIS and comment on any information about itself. The Department will consider comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

F. Federal Award Administration Information

1. Federal Award Notice

Following the evaluation outlined in Section E, the Secretary will announce awarded projects by posting a list of selected projects at *www.transportation.gov/BUILDgrants*. Notice of selection is not authorization to begin performance. Following that announcement, the relevant operating administration will contact the point of contact listed in the SF 424 to initiate negotiation of the grant agreement for authorization.

2. Administrative and National Policy Requirements

All awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR part 200, as adopted by DOT at 2 CFR part 1201. Federal wage rate requirements included in subchapter IV of chapter 31 of title 40, U.S.C., apply to all projects receiving funds under this program, and apply to all parts of the project, whether funded with BUILD Transportation Grant funds, other Federal funds, or non-Federal funds.

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, recipients of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States; the conditions of performance, non-discrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of the Department of Transportation; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, recipients, in particular, must ensure that no concession agreements are denied or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If the Department determines that a recipient has failed to comply with applicable Federal requirements, the Department may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds.

Additionally, applicable Federal laws, rules and regulations of the relevant operating administration administering the project will apply to the projects that receive BUILD Transportation grant awards, including planning requirements, Service Outcome Agreements, Stakeholder Agreements, Buy America compliance, and other requirements under DOT's other highway, transit, rail, and port grant programs. In particular, Executive Order 13858 directs the Executive Branch Departments and agencies to maximize the use of goods, products, and materials produced in the United States through the terms and conditions of Federal financial assistance awards. If selected for an award, grantees must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials in constructing their project BUILD Transportation grant projects involving vehicle acquisition must involve only vehicles that comply with applicable Federal Motor Vehicle Safety Standards and Federal Motor Vehicle Safety Regulations, or vehicles that are exempt from Federal Motor Carrier Safety Standards or Federal Motor Carrier Safety Regulations in a manner that allows for the legal acquisition and deployment of the vehicle or vehicles.

For projects administered by FHWA, applicable Federal laws, rules, and regulations set forth in Title 23 U.S.C. and Title 23 CFR apply, including the 23 U.S.C. 129 restrictions on the use of toll revenues, and Section 4(f) preservation of parklands and historic properties requirements under 23 U.S.C. 138. .For an illustrative list of the other applicable laws, rules, regulations, executive orders, polices, guidelines, and requirements as they relate to a BUILD Transportation grant project administered by the FHWA, please see *https://ops.fhwa.dot.gov/Freight/infrastructure/tiger/fy2016_gr_exhbt/index.htm*.

For BUILD Transportation projects administered by the Federal Transit Administration and partially funded with Federal transit assistance, all relevant requirements under chapter 53 of title 49 U.S.C. apply. For transit projects funded exclusively with BUILD Transportation grant funds, some requirements of chapter 53 of title 49 U.S.C. and chapter VI of title 49 CFR apply.

For projects administered by the Federal Railroad Administration, FRA requirements described in 49 U.S.C. Subtitle V, Part C apply.

For each project that receives a BUILD Transportation grant award, the terms of the award will require the recipient to complete the project using at least the level of non-Federal funding that was specified in the application. If the actual costs of the project are greater than the costs estimated in the application, the recipient will be responsible for increasing the non-Federal contribution. If the actual costs of the project are less than the costs estimated in the application, DOT will generally reduce the Federal contribution.

3. Reporting

i. Progress Reporting on Grant Activities

Each applicant selected for BUILD Transportation grant funding must submit quarterly progress reports and Federal Financial Reports (SF–425) to monitor project progress and ensure accountability and financial transparency in the BUILD Transportation grant program.

ii. System Performance Reporting

Each applicant selected for BUILD Transportation grant funding must collect and report to the DOT information on the project's performance. The specific performance information and reporting time period will be determined on a project-by-project basis. Performance indicators will not include formal goals or targets, but will include observed measures under baseline (pre-project) as well as post-implementation outcomes, and will be used to evaluate and compare projects and monitor the results that grant funds achieve to the intended long-term outcomes of the BUILD Transportation grant program are achieved. To the extent possible, performance indicators used in the reporting should align with the measures included in the application and should relate to at least one of the selection criteria defined in Section E. Performance reporting continues for several years after project construction is completed, and DOT does not provide BUILD Transportation grant funding specifically for performance reporting.

iii. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then the applicant during that period of time must maintain the currency of information reported to the SAM that is made available in the designated integrity and performance system (currently FAPIIS) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

G. Federal Awarding Agency Contacts

For further information concerning this notice please contact the BUILD Transportation grant program staff via email at *BUILDgrants@dot.gov,* or call Howard Hill at 202–366–0301. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, DOT will post answers to questions and requests for clarifications on DOT's website at *www.transportation.gov/BUILDgrants.* To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact DOT directly, rather than through intermediaries or third parties, with questions. DOT staff may also conduct briefings on the BUILD Transportation grant selection and award process upon request.

H. Other information

1. Protection of Confidential Business Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the applicant submits information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant must provide that information in a separate document, which the applicant may cross-reference from the application narrative or other portions of the application. For the separate document containing confidential information, the applicant must do the following: (1) State on the cover of that document that it ''Contains Confidential Business Information (CBI)''; (2) mark each page that contains confidential information with ''CBI''; (3) highlight or otherwise denote the confidential content on each page; and (4) at the end of the document, explain how disclosure of the confidential information would cause substantial competitive harm. DOT will protect confidential information complying with these requirements to the extent required under applicable law. If DOT receives a Freedom of Information Act (FOIA) request for the information that the applicant has marked in accordance with this section, DOT will follow the procedures described in its FOIA regulations at 49 CFR 7.29. Only information that is in the separate document, marked in accordance with this section, and ultimately determined to be confidential under § 7.29 will be exempt from disclosure under FOIA.

2. Publication/Sharing of Application Information

Following the completion of the selection process and announcement of awards, the Department intends to publish a list of all applications received along with the names of the applicant organizations and funding amounts requested. Except for the information properly marked as described in Section H.1., the Department may make application narratives publicly available or share application information within the Department or with other Federal agencies if the Department determines that sharing is relevant to the respective program's objectives.

3. Department Feedback on Applications

The Department strives to provide as much information as possible to assist applicants with the application process. The Department will not review applications in advance, but Department staff are available for technical questions and assistance. To efficiently use Department resources, the Department will prioritize interactions with applicants who have not already received a debrief on their FY 2018 BUILD Transportation grant application. Program staff will address questions to *BUILDgrants@dot.gov* throughout the application period. Department staff will make reasonable efforts to schedule meetings on projects through May 31, 2019. After that date, Department staff will schedule meetings only to the extent possible and consistent with timely completion of other activities.

Issued On: April 16, 2019.

Elaine L. Chao,

Secretary.

[FR Doc. 2019–08137 Filed 4–22–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 9, 2019.

FOR FURTHER INFORMATION CONTACT: Fred Smith at 1–888–912–1227 or (202) 317–3087.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Thursday, May 9, 2019, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Fred Smith. For more information please contact Fred Smith at 1–888–912–1227 or (202) 317–3087, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org*.

Dated: April 17, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–08088 Filed 4–22–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 9, 2019.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Project Committee will be held Thursday, May 9, 2019, at 3:00 p.m. Eastern time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org*. The agenda will include various IRS issues.

Dated: April 17, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–08084 Filed 4–22–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 8, 2019.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Wednesday, May 8, 2019, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org*. The agenda will include various IRS issues.

Dated: April 17, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–08086 Filed 4–22–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 14, 2019.

FOR FURTHER INFORMATION CONTACT: Conchata Holloway at 1–888–912–1227 or (336) 690–6217.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Notices and Correspondence Project Committee will be held Tuesday, May 14, 2019, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Conchata Holloway. For more information please contact Conchata Holloway at 1–888–912–1227 or (336) 690–6217, or write TAP Office, 4905 Koger Blvd., Greensboro, NC 27407 or contact us at the website: *http://www.improveirs.org*. The agenda will include various IRS issues.

Dated: April 17, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–08087 Filed 4–22–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 8, 2019.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, May 8, 2019, 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Rosalind Matherne. For more information please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org*. The agenda will include various IRS issues.

Dated: April 17, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–08085 Filed 4–22–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 8, 2019.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or 202–317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Wednesday, May 8, 2019, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1–888–912–1227 or 202–317–4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.*

Dated: April 17, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–08089 Filed 4–22–19; 8:45 am]

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; FY 2020 Inpatient Psychiatric Facilities Prospective Payment System and Quality Reporting Updates for Fiscal Year Beginning October 1, 2019 (FY 2020); Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1712–P]

RIN 0938–AT69

Medicare Program; FY 2020 Inpatient Psychiatric Facilities Prospective Payment System and Quality Reporting Updates for Fiscal Year Beginning October 1, 2019 (FY 2020)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the prospective payment rates, the outlier threshold, and the wage index for Medicare inpatient hospital services provided by Inpatient Psychiatric Facilities (IPFs), which include psychiatric hospitals and excluded psychiatric units of an inpatient prospective payment system hospital or critical access hospital. Additionally, this proposed rule would revise and rebase the IPF market basket to reflect a 2016 base year and remove the IPF Prospective Payment System (PPS) 1-year lag of the wage index data. This proposed rule also solicits comments on the IPF wage index. Finally, this rule proposes updates to the Inpatient Psychiatric Facilities Quality Reporting Program. These changes would be effective for IPF discharges occurring during the fiscal year (FY) beginning October 1, 2019 through September 30, 2020 (FY 2020).

DATES: To be assured consideration, comments must be received at one of the addresses provided in the **ADDRESSES** section no later than 5 p.m. on June 17, 2019.

ADDRESSES: In commenting, please refer to file code CMS–1712–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1712–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1712–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: The IPF Payment Policy mailbox at *IPFPaymentPolicy@cms.hhs.gov* for general information.

Mollie Knight, (410) 786–7948 or Hudson Osgood, (410) 786–7897, for information regarding the market basket rebasing, update, or the labor related share.

Theresa Bean, (410) 786–2287 or James Hardesty, (410) 786–2629, for information regarding the regulatory impact analysis.

James Poyer, (410) 786–2261 or Jeffrey Buck, (410) 786–0407, for information regarding the inpatient psychiatric facility quality reporting program.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

Availability of Certain Tables Exclusively Through the Internet on the CMS Website

Addendum A to this proposed rule summarizes the FY 2020 IPF PPS payment rates, outlier threshold, Cost of Living Adjustment factors, national and upper limit cost-to-charge ratio, and adjustment factors. In addition, the B Addenda to this proposed rule show the complete listing of ICD–10 Clinical Modification (CM) and Procedure Coding System codes underlying the Code First table (Addendum B–1), the FY 2020 IPF PPS comorbidity adjustment (Addenda B–2 and B–3), and electroconvulsive therapy (ECT) procedure codes (Addendum B–4). The A and B addenda are available online at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

Tables setting forth the FY 2020 Wage Index for Urban Areas Based on Core-Based Statistical Area (CBSA) Labor Market Areas and the FY 2020 Wage Index Based on CBSA Labor Market Areas for Rural Areas are available exclusively through the internet, on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/IPFPPS/WageIndex.html.* In addition, Addendum C to this proposed rule is a provider-level file of the effects of the proposed change to the wage index methodology, and is available at the same CMS website address.

I. Executive Summary

A. Purpose

This proposed rule would update the prospective payment rates, the outlier threshold, and the wage index for Medicare inpatient hospital services provided by Inpatient Psychiatric Facilities (IPFs) for discharges occurring during the Fiscal Year (FY) beginning October 1, 2019 through September 30, 2020. Additionally, this proposed rule would revise and rebase the IPF market basket to reflect a 2016 base year and use the concurrent hospital wage data as the basis of the IPF wage index rather than using the prior year's Inpatient Prospective Payment System (IPPS) hospital wage data. This proposed rule also solicits comments on the IPF wage index. Finally, this proposed rule proposes updates to the Inpatient Psychiatric Facility Quality Reporting (IPFQR) Program.

B. Summary of the Major Provisions

1. Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS)

For the IPF PPS, we propose to:

- Revise and rebase the IPF market basket to reflect a 2016 base year: Since the IPF PPS inception, the market basket used to update IPF PPS payments has been rebased and revised to reflect more recent data on IPF cost structures. We last rebased and revised the market basket applicable to IPFs in the FY 2016 IPF PPS rule (80 FR 46656 through 46679), when we adopted a 2012-based IPF-specific market-basket.
- Adjust the 2016-based IPF market basket update: We would adjust the 2016-based IPF market basket update (currently estimated to be 3.1 percent) by a reduction for economy-wide productivity (currently estimated to be 0.5 percentage point) as required by section 1886(s)(2)(A)(i) of the Social Security Act (the Act). We would further reduce the 2016-based IPF

market basket update by 0.75 percentage point as required by section 1886(s)(2)(A)(ii) of the Act, resulting in a proposed estimated IPF payment rate update of 1.85 percent for FY 2020.

• Make technical rate setting changes: The IPF PPS payment rates are adjusted annually for inflation, as well as statutory and other policy factors. We are proposing to update:

++ The IPF PPS federal per diem base rate from $782.78 to $803.48.

++ The IPF PPS federal per diem base rate for providers who failed to report quality data to $787.70.

++ The Electroconvulsive therapy (ECT) payment per treatment from $337.00 to $345.91.

++ The ECT payment per treatment for providers who failed to report quality data to $339.12.

++ The labor-related share from 74.8 percent to 76.8 percent (based on the proposed 2016-based IPF market basket).

++ The core-based statistical area (CBSA) rural and urban wage indices for FY 2020, using the FY 2020 pre-floor, pre-reclassified IPPS hospital wage index data and OMB designations from OMB Bulletin 17–01.

++ The wage index budget-neutrality adjustment from 1.0013 to 1.0078.

++ The fixed dollar loss threshold amount from $12,865 to $14,590 to maintain estimated outlier payments at 2 percent of total estimated aggregate IPF PPS payments.

• Eliminate the 1-year lag in the wage index data: We would align IPF wage index data with the concurrent IPPS wage index data by removing the 1-year lag of the pre-floor, pre-reclassified IPPS hospital wage index upon which the IPF wage index is based.

We are also soliciting comments on the IPF wage index.

2. Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program

We are proposing to update the IPFQR Program by proposing a new measure for the program.

C. Summary of Impacts

Provision description	Total transfers & cost reductions
FY 2020 IPF PPS payment update	The overall economic impact of this proposed rule is an estimated $75 million in increased payments to IPFs during FY 2020.
Updated quality reporting program (IPFQR) Program requirements.	$0.

II. Background

A. Overview of the Legislative Requirements of the IPF PPS

Section 124 of the Medicare, Medicaid, and State Children's Health Insurance Program Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) required the establishment and implementation of an IPF PPS. Specifically, section 124 of the BBRA mandated that the Secretary of the Department of Health and Human Services (the Secretary) develop a per diem PPS for inpatient hospital services furnished in psychiatric hospitals and excluded psychiatric units including an adequate patient classification system that reflects the differences in patient resource use and costs among psychiatric hospitals and excluded psychiatric units. ''Excluded psychiatric unit'' means a psychiatric unit in an Inpatient Prospective Payment System (IPPS) hospital that is excluded from the IPPS, or a psychiatric unit in a Critical Access Hospital (CAH) that is excluded from the CAH payment system. These excluded psychiatric units would be paid under the IPF PPS.

Section 405(g)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) extended the IPF PPS to psychiatric distinct part units of CAHs.

Sections 3401(f) and 10322 of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by section 10319(e) of that Act and by section 1105(d) of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (hereafter referred to jointly as ''the Affordable Care Act'') added subsection (s) to section 1886 of the Social Security Act (the Act).

Section 1886(s)(1) of the Act titled ''Reference to Establishment and Implementation of System,'' refers to section 124 of the BBRA, which relates to the establishment of the IPF PPS.

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the rate year (RY) beginning in 2012 (that is, a RY that coincides with a fiscal year (FY)) and each subsequent RY. As noted in our FY 2019 IPF PPS final rule with comment period, published in the **Federal Register** on August 6, 2018 (83 FR 38576 through 38620), for the RY beginning in 2018, the productivity adjustment currently in place is equal to 0.8 percentage point.

Section 1886(s)(2)(A)(ii) of the Act requires the application of an ''other adjustment'' that reduces any update to an IPF PPS base rate by a percentage point amount specified in section 1886(s)(3) of the Act for the RY beginning in 2010 through the RY beginning in 2019. As noted in the FY 2019 IPF PPS final rule, for the RY beginning in 2018, section 1886(s)(3)(E) of the Act requires that the other adjustment reduction currently in place be equal to 0.75 percentage point.

Sections 1886(s)(4)(A) and 1886(s)(4)(B) of the Act require that for RY 2014 and each subsequent rate year, IPFs that fail to report required quality data with respect to such a RY shall have their annual update to a standard federal rate for discharges reduced by 2.0 percentage points. This may result in an annual update being less than 0.0 for a RY, and may result in payment rates for the upcoming rate year being less than such payment rates for the preceding rate year. Any reduction for failure to report required quality data shall apply only to the RY involved, and the Secretary shall not take into account such reduction in computing the payment amount for a subsequent RY. (See section II.C of this proposed rule for an explanation of the IPF PPS RY.) More information about the specifics of the current IPFQR Program is available in the FY 2019 IFP PPS and Quality Reporting Updates for Fiscal Year Beginning October 1, 2018 final rule (83 FR 38589 through 38608).

To implement and periodically update these provisions, we have published various proposed and final rules and notices in the **Federal Register**. For more information regarding these documents, see the Center for Medicare & Medicaid (CMS) website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/index.html?redirect=/InpatientPsychFacilPPS/.*

B. Overview of the IPF PPS

The November 2004 IPF PPS final rule (69 FR 66922) established the IPF PPS, as required by section 124 of the BBRA and codified at 42 CFR part 412, subpart N. The November 2004 IPF PPS

final rule set forth the federal per diem base rate for the implementation year (the 18-month period from January 1, 2005 through June 30, 2006), and provided payment for the inpatient operating and capital costs to IPFs for covered psychiatric services they furnish (that is, routine, ancillary, and capital costs, but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IPF PPS). Covered psychiatric services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) of the Medicare program.

The IPF PPS established the federal per diem base rate for each patient day in an IPF derived from the national average daily routine operating, ancillary, and capital costs in IPFs in FY 2002. The average per diem cost was updated to the midpoint of the first year under the IPF PPS, standardized to account for the overall positive effects of the IPF PPS payment adjustments, and adjusted for budget-neutrality.

The federal per diem payment under the IPF PPS is comprised of the federal per diem base rate described previously and certain patient- and facility-level payment adjustments that were found in the regression analysis to be associated with statistically significant per diem cost differences.

The patient-level adjustments include age, Diagnosis-Related Group (DRG) assignment, and comorbidities; additionally, there are variable per diem adjustments to reflect higher per diem costs at the beginning of a patient's IPF stay. Facility-level adjustments include adjustments for the IPF's wage index, rural location, teaching status, a cost-of-living adjustment for IPFs located in Alaska and Hawaii, and an adjustment for the presence of a qualifying emergency department (ED).

The IPF PPS provides additional payment policies for outlier cases, interrupted stays, and a per treatment payment for patients who undergo electroconvulsive therapy (ECT). During the IPF PPS mandatory 3-year transition period, stop-loss payments were also provided; however, since the transition ended as of January 1, 2008, these payments are no longer available.

A complete discussion of the regression analysis that established the IPF PPS adjustment factors can be found in the November 2004 IPF PPS final rule (69 FR 66933 through 66936).

C. Requirements for Updating the IPF PPS

Section 124 of the BBRA did not specify an annual rate update strategy for the IPF PPS and was broadly written to give the Secretary discretion in establishing an update methodology. Therefore, in the November 2004 IPF PPS final rule, we implemented the IPF PPS using the following update strategy:

- Calculate the final federal per diem base rate to be budget-neutral for the 18-month period of January 1, 2005 through June 30, 2006.
- Use a July 1 through June 30 annual update cycle.
- Allow the IPF PPS first update to be effective for discharges on or after July 1, 2006 through June 30, 2007.

In RY 2012, we proposed and finalized switching the IPF PPS payment rate update from a RY that begins on July 1 and ends on June 30, to one that coincides with the federal FY that begins October 1 and ends on September 30. In order to transition from one timeframe to another, the RY 2012 IPF PPS covered a 15-month period from July 1, 2011 through September 30, 2012. Therefore, the IPF RY has been equivalent to the October 1 through September 30 federal FY since RY 2013. For further discussion of the 15-month market basket update for RY 2012 and changing the payment rate update period to coincide with a FY period, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and the RY 2012 IPF PPS final rule (76 FR 26432).

In November 2004, we implemented the IPF PPS in a final rule that published on November 15, 2004 in the **Federal Register** (69 FR 66922). In developing the IPF PPS, and to ensure that the IPF PPS is able to account adequately for each IPF's case-mix, we performed an extensive regression analysis of the relationship between the per diem costs and certain patient and facility characteristics to determine those characteristics associated with statistically significant cost differences on a per diem basis. For characteristics with statistically significant cost differences, we used the regression coefficients of those variables to determine the size of the corresponding payment adjustments.

In that final rule, we explained the reasons for delaying an update to the adjustment factors, derived from the regression analysis, including waiting until we have IPF PPS data that yields as much information as possible regarding the patient-level characteristics of the population that each IPF serves. We indicated that we did not intend to update the regression analysis and the patient-level and facility-level adjustments until we complete that analysis. Until that analysis is complete, we stated our intention to publish a notice in the **Federal Register** each spring to update the IPF PPS (69 FR 66966).

On May 6, 2011, we published a final rule in the **Federal Register** titled, ''Inpatient Psychiatric Facilities Prospective Payment System—Update for Rate Year Beginning July 1, 2011 (RY 2012)'' (76 FR 26432), which changed the payment rate update period to a RY that coincides with a FY update. Therefore, final rules are now published in the **Federal Register** in the summer to be effective on October 1. When proposing changes in IPF payment policy, a proposed rule would be issued in the spring and the final rule in the summer to be effective on October 1. For a detailed list of updates to the IPF PPS, we refer readers to our regulations at 42 CFR 412.428.

Our most recent IPF PPS annual update was published in a final rule on August 6, 2018 in the **Federal Register** titled, ''Medicare Program; FY 2019 Inpatient Psychiatric Facilities Prospective Payment System and Quality Reporting Updates'' (83 FR 38576), which updated the IPF PPS payment rates for FY 2019. That final rule updated the IPF PPS federal per diem base rates that were published in the FY 2018 IPF PPS Rate Update final rule (82 FR 36771) in accordance with our established policies.

III. Provisions of the FY 2020 IPF PPS Proposed Rule

A. Proposed Rebasing and Revising of the Market Basket for the IPF PPS

1. Background

Originally, the input price index used to develop the IPF PPS was the Excluded Hospital with Capital market basket. This market basket was based on 1997 Medicare cost reports for Medicare-participating inpatient rehabilitation facilities (IRFs), IPFs, long-term care hospitals (LTCHs), cancer hospitals, and children's hospitals. Although ''market basket'' technically describes the mix of goods and services used in providing health care at a given point in time, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies) derived from that market basket. Accordingly, the term ''market basket,'' as used in this document, refers to an input price index.

Since the IPF PPS inception, the market basket used to update IPF PPS payments has been rebased and revised to reflect more recent data on IPF cost structures. We last rebased and revised the market basket applicable to the IPF PPS in the FY 2016 IPF PPS final rule

(80 FR 46656 through 46679), where we adopted a 2012-based IPF market basket. The 2012-based IPF market basket used Medicare cost report data for both Medicare-participating freestanding psychiatric hospitals and hospital-based psychiatric units. References to the historical market baskets used to update IPF PPS payments are listed in the FY 2016 IPF PPS final rule (80 FR 46656). For the FY 2020 IPF PPS proposed rule, we are proposing to rebase and revise the IPF market basket to reflect a 2016 base year.

2. Overview of the Proposed 2016-Based IPF Market Basket

The proposed 2016-based IPF market basket is a fixed-weight, Laspeyres-type price index. A Laspeyres price index measures the change in price, over time, of the same mix of goods and services purchased in the base period. Any changes in the quantity or mix of goods and services (that is, intensity) purchased over time relative to a base period are not measured.

The index itself is constructed in three steps. First, a base period is selected (in this proposed rule, the base period is 2016) and total base period expenditures are estimated for a set of mutually exclusive and exhaustive spending categories. Each category is calculated as a proportion of total costs. These proportions are called cost or expenditure weights. Second, each expenditure category is matched to an appropriate price or wage variable, referred to as a price proxy. In nearly every instance, these price proxies are derived from publicly available statistical series that are published on a consistent schedule (preferably at least on a quarterly basis). Finally, the expenditure weight for each cost category is multiplied by the level of its respective price proxy. The sum of these products (that is, the expenditure weights multiplied by their price levels) for all cost categories yields the composite index level of the market basket in a given period. Repeating this step for other periods produces a series of market basket levels over time. Dividing an index level for a given period by an index level for an earlier period produces a rate of growth in the input price index over that timeframe.

As noted, the market basket is described as a fixed-weight index because it represents the change in price over time of a constant mix (quantity and intensity) of goods and services needed to furnish IPF services. The effects on total expenditures resulting from changes in the mix of goods and services purchased after the base period are not measured. For example, an IPF hiring more nurses after the base period to accommodate the needs of patients will increase the volume of goods and services purchased by the IPF, but would not be factored into the price change measured by a fixed-weight IPF market basket. Only when the index is rebased will changes in the quantity and intensity be captured, with those changes being reflected in the cost weights. Therefore, we rebase the market basket periodically so that the cost weights reflect recent changes in the mix of goods and services that IPFs purchase to furnish inpatient care between base periods.

3. Creating an IPF-Specific Market Basket

As discussed in the FY 2016 final rule (80 FR 46656 through 46679), the 2012-based IPF market basket reflects the Medicare cost reports for both freestanding and hospital-based facilities. Previous market baskets, such as the 2008-based rehabilitation, psychiatric, and long-term care (RPL) market basket, were calculated using Medicare cost report data for freestanding facilities only. We used only freestanding facilities due to concerns regarding our ability to incorporate Medicare cost report data for hospital-based providers. After research on the available Medicare cost report data, we concluded that Medicare cost report data for both freestanding IPFs and hospital-based IPFs can be used to calculate the major market basket cost weights for a stand-alone IPF market basket. In the FY 2016 IPF PPS final rule (80 FR 46656 through 46679), we finalized a detailed methodology to derive market basket cost weights using Medicare cost report data for both freestanding IPFs and hospital-based IPFs.

For this FY 2020 proposed rule, we are proposing to rebase and revise the 2012-based IPF market basket to a 2016 base year reflecting both freestanding IPFs and hospital-based IPFs. In section III.A.3.a., ''Development of Cost Categories and Weights,'' we provide a detailed description of our proposed methodology used to develop the 2016-based IPF market basket.

a. Development of Cost Categories and Weights

i. Medicare Cost Reports

We are proposing a 2016-based IPF market basket that consists of seven major cost categories and a residual derived from the 2016 Medicare cost reports (CMS Form 2552–10 effective for cost reports beginning on or after May 1, 2010) for freestanding and hospital-based IPFs. CMS Form 2552–10 was also used to derive the major cost categories in the 2012-based IPF market basket. The seven cost categories are Wages and Salaries, Employee Benefits, Contract Labor, Pharmaceuticals, Professional Liability Insurance (PLI), Home Office Contract Labor, and Capital. The 2012-based IPF market basket did not have a Home Office Contract Labor cost category. The residual ''All Other'' category reflects all remaining costs not captured in the seven cost categories. The 2016 cost reports include providers whose cost reporting period beginning date is on or between October 1, 2015 and September 30, 2016. We are proposing to select 2016 as the base year because we believe that the Medicare cost reports for this year represent the most recent, complete set of Medicare cost report data available at the time of this rulemaking.

Similar to the Medicare cost report data used to develop the 2012-based IPF market basket, the Medicare cost report data for 2016 show large differences between some providers' Medicare length of stay (LOS) and total facility LOS. Our goal has always been to measure cost weights that are reflective of case mix and practice patterns associated with providing services to Medicare beneficiaries. Therefore, we are again proposing to limit our selection of Medicare cost reports used in the 2016-based IPF market basket to those facilities that had a Medicare LOS within a comparable range of their total facility average LOS. The Medicare average LOS for freestanding IPFs is calculated from data reported on line 14 of Worksheet S–3, part I. The Medicare average LOS for hospital-based IPFs is calculated from data reported on line 16 of Worksheet S–3, part I. To derive the proposed 2016-based IPF market basket, for those IPFs with an average facility LOS of greater than or equal to 15 days, we are proposing to include IPFs where the Medicare LOS is within 50 percent (higher or lower) of the average facility LOS. For those IPFs whose average facility LOS is less than 15 days, we are proposing to include IPFs where the Medicare LOS is within 95 percent (higher or lower) of the facility LOS. We are proposing to apply this LOS edit to the data for IPFs to exclude providers that serve a population whose LOS would indicate that the patients served are not consistent with a LOS of a typical Medicare patient. This is the same LOS edit applied to the 2012-based IPF market basket.

Applying these trims to the approximate 1,600 total cost reports (freestanding and hospital-based)

resulted in roughly 1,500 IPF Medicare cost reports with an average Medicare LOS of 12 days, average facility LOS of 9 days, and Medicare utilization (as measured by Medicare inpatient IPF days as a percentage of total facility days) of 26 percent. Providers excluded from the proposed 2016-based IPF market basket (about 130 Medicare cost reports) had an average Medicare LOS of 25 days, average facility LOS of 55 days, and a Medicare utilization of 4 percent. Of those excluded, about 70 percent of these were freestanding providers; on the other hand, freestanding providers represent about 30 percent of all IPFs. We note that seventy percent of those excluded from the 2012-based IPF market basket using this LOS edit were also freestanding providers.

Using the post-LOS set of 2016 Medicare cost reports, we calculated costs for the seven major cost categories (Wages and Salaries, Employee Benefits, Contract Labor, Professional Liability Insurance, Pharmaceuticals, Home Office Contract Labor, and Capital). For comparison, the 2012-based IPF market basket utilized the Bureau of Economic Analysis Benchmark Input-Output data to derive the Home Office Contract Labor cost weight rather than the Medicare cost report data. A more detailed discussion of this methodological change is provided.

Similar to the 2012-based IPF market basket major cost weights, the proposed 2016-based IPF market basket cost weights reflect Medicare allowable costs (routine, ancillary, and capital costs) that are eligible for inclusion under the IPF PPS payments. We propose to define Medicare allowable costs for freestanding IPFs as Worksheet B, part I, column 26, lines 30 through 35, 50 through 76 (excluding 52 and 75), 90 through 91, and 93. For hospital-based IPFs, we propose that total Medicare allowable costs be equal to total costs for the IPF inpatient unit after the allocation of overhead costs (Worksheet B, part I, column 26, line 40) and a portion of total ancillary costs (Worksheet B, part I, column 26, lines 50 through 76 (excluding 52 and 75), 90 through 91, and 93). We propose to calculate the portion of ancillary costs attributable to the hospital-based IPF for a given ancillary cost center by multiplying total facility ancillary costs for the specific cost center (as reported on Worksheet B, part I, column 26) by the ratio of IPF Medicare ancillary costs for the cost center (as reported on Worksheet D–3, column 3 for IPF subproviders) to total Medicare ancillary costs for the cost center (equal to the sum of Worksheet D–3, column 3 for all Inpatient Prospective Payment System (IPPS), Skilled Nursing Facility (SNF), IRF, and IPF). This is the same methodology used for the 2012-based IPF market basket.

We are providing a description of the proposed methodologies used to derive costs for the seven major cost categories.

Wages and Salaries Costs

For freestanding IPFs, we are proposing that Wages and Salaries costs be derived as the sum of routine inpatient salaries, ancillary salaries, and a proportion of overhead (or general service cost centers in the Medicare Cost Report (MCR)) salaries as reported on Worksheet A, column 1. Since overhead salary costs are attributable to the entire IPF, we only include the proportion attributable to the Medicare allowable cost centers. We are proposing to estimate the proportion of overhead salaries that are attributed to Medicare allowable costs centers by multiplying the ratio of Medicare allowable salaries (Worksheet A, column 1, lines 50 through 76 (excluding 52 and 75), 90 through 91, and 93) to total salaries (Worksheet A, column 1, line 200) times total overhead salaries (Worksheet A, column 1, lines 4 through 18). This is the same methodology used in the 2012-based IPF market basket.

We are proposing that Wages and Salaries costs for hospital-based IPFs are derived by summing inpatient routine salary costs, ancillary salaries, overhead salary costs attributable to the IPF inpatient unit, and a portion of overhead salary costs attributable to the ancillary departments.

We are proposing to calculate hospital-based inpatient routine salary costs using Worksheet A, column 1, line 40.

We are proposing to calculate hospital-based ancillary salary costs for a specific cost center (Worksheet A, column 1, lines 50 through 76 (excluding 52 and 75), 90 through 91, and 93) using salary costs from Worksheet A, column 1 multiplied by the ratio of IPF Medicare ancillary costs for the cost center (as reported on Worksheet D–3, column 3 for IPF subproviders) to total Medicare ancillary costs for the cost center (equal to the sum of Worksheet D–3, column 3 for IPPS, SNF, IRF, and IPF).

We are proposing to calculate the hospital-based overhead salaries attributable to the IPF inpatient unit by first calculating total noncapital overhead costs (Worksheet B, part I, columns 4 through 18, line 40 less Worksheet B, part II, columns 4 through 18) for each ancillary department. We then multiply total noncapital overhead costs by the ratio of total facility overhead salaries (as reported on Worksheet A, column 1, lines 4 through 18) to total facility noncapital overhead costs (as reported on Worksheet A, column 1 and 2, lines 4 through 18).

We are proposing to calculate the hospital-based portion of overhead salaries attributable to each ancillary department by first calculating total noncapital overhead costs attributable to each specific ancillary department (Worksheet B, part I, columns 4 through 18 less Worksheet B, part II, columns 4 through 18). We then identify the portion of these noncapital overhead costs attributable to Wages and Salaries by multiplying these costs by the ratio of total facility overhead salaries (as reported on Worksheet A, column 1, lines 4 through 18) to total overhead costs (as reported on Worksheet A, column 1 and 2, lines 4 through 18). Finally, we identified the portion of these overhead salaries for each ancillary department that is attributable to the hospital-based IPF by multiplying by the ratio of IPF Medicare ancillary costs for the cost center (as reported on Worksheet D–3, column 3 for hospital-based IPFs) to total Medicare ancillary costs for the cost center (equal to the sum of Worksheet D–3, column 3 for all IPPS, SNF, IRF, and IPF).

This is the same Wages and Salaries Costs methodology used to derive the 2012-based IPF market basket.

Employee Benefits Costs

Effective with the implementation of CMS Form 2552–10, we began collecting Employee Benefits and Contract Labor data on Worksheet S–3, part V.

For 2016 Medicare cost report data, the majority of providers did not report data on Worksheet S–3, part V. One (1) percent of freestanding IPFs and roughly 40 percent of hospital-based IPFs reported data on Worksheet S–3, part V. Again, we continue to encourage all providers to report these data on the Medicare cost report.

For freestanding IPFs, we are proposing Employee Benefits costs are equal to the data reported on Worksheet S–3, part V, column 2, line 2. We note that while not required to do so, freestanding IPFs also may report Employee Benefits data on Worksheet S–3, part II, which is applicable to only IPPS providers. For those freestanding IPFs that report Worksheet S–3, part II data, but not Worksheet S–3, part V, we are proposing to use the sum of Worksheet S–3, part II lines 17, 18, 20, and 22 to derive Employee Benefits costs. This proposed method allows us to obtain data from more than 20 freestanding IPFs (roughly 5 percent of

all freestanding IPFs) than if we were to only use Worksheet S–3, part V data as was done for the 2012-based IPF market basket.

For hospital-based IPFs, we are proposing to calculate total benefit costs as the sum of inpatient unit benefit costs, a portion of ancillary benefits, and a portion of overhead benefits attributable to the routine inpatient unit and a portion of overhead benefits attributable to the ancillary departments.

We are proposing hospital-based inpatient unit benefit costs be equal to Worksheet S–3 part V, column 2, line 3.

We are proposing the hospital-based portion of ancillary benefit costs be equal to hospital-based ancillary salaries times the ratio of total facility benefits to total facility salaries.

We are proposing that the hospital-based portion of overhead benefits attributable to the routine inpatient unit and ancillary departments be calculated by multiplying ancillary salaries for the hospital-based IPF and overhead salaries attributable to the hospital-based IPF (determined in the derivation of hospital-based IPF Wages and Salaries costs as described) by the ratio of total facility benefits to total facility salaries. Total facility benefits is equal to the sum of Worksheet S–3, part II, column 4, lines 17–25 and total facility salaries is equal to Worksheet S–3, part II, column 4, line 1.

Contract Labor Costs

Contract Labor costs are primarily associated with direct patient care services. Contract Labor costs are exclusive of Home Office Contract Labor costs. Contract labor costs for other services such as accounting, billing, and legal are calculated separately using other government data sources as described in section III.A.3.a.iii of this proposed rule. To derive contract labor costs using Worksheet S–3, part V data, for freestanding IPFs, we are proposing Contract Labor costs be equal to Worksheet S–3, part V, column 1, line 2. As we noted for Employee Benefits, freestanding IPFs also may report Contract Labor data on Worksheet S–3, part II, which is applicable to only IPPS providers. For those freestanding IPFs that report Worksheet S–3, part II data, but not Worksheet S–3, part V, we are proposing to use the sum of Worksheet S–3, part II lines 11 and 13 to derive Contract Labor costs. For the 2012-based IPF market basket, we only used data from Worksheet S–3, part V, column 1, line 2 to derive the Contract Labor costs for freestanding IPFs.

For hospital-based IPFs, we are proposing that Contract Labor costs be equal to Worksheet S–3, part V, column 1, line 3. Reporting of this data continues to be somewhat limited; therefore, we continue to encourage all providers to report these data on the Medicare cost report.

Pharmaceuticals Costs

For freestanding IPFs, we are proposing to calculate pharmaceuticals costs using non-salary costs reported on Worksheet A, column 7 less Worksheet A, column 1 for the pharmacy cost center (line 15) and drugs charged to patients cost center (line 73).

For hospital-based IPFs, we are proposing to calculate pharmaceuticals costs as the sum of a portion of the non-salary pharmacy costs and a portion of the non-salary drugs charged to patient costs reported for the total facility.

We propose that hospital-based non-salary pharmacy costs attributable to the hospital-based IPF are calculated by multiplying total pharmacy costs attributable to the hospital-based IPF (as reported on Worksheet B, part I, column 15, line 40) by the ratio of total non-salary pharmacy costs (Worksheet A, column 2, line 15) to total pharmacy costs (sum of Worksheet A, column 1 and 2 for line 15) for the total facility.

We propose that hospital-based non-salary drugs charged to patient costs attributable to the hospital-based IPF are calculated by multiplying total non-salary drugs charged to patient costs (Worksheet B, part I, column 0, line 73 plus Worksheet B, part I, column 15, line 73 less Worksheet A, column 1, line 73) for the total facility by the ratio of Medicare drugs charged to patient ancillary costs for the IPF unit (as reported on Worksheet D–3 for IPF subproviders, column 3, line 73) to total Medicare drugs charged to patients ancillary costs for the total facility (equal to the sum of Worksheet D–3, column 3, line 73, for all IPPS, SNF, IRF, and IPF).

This is the same Pharmaceuticals Costs methodology used to derive the 2012-based IPF market basket.

Professional Liability Insurance (PLI) Costs

For freestanding IPFs, we are proposing that PLI costs (often referred to as malpractice costs) are equal to premiums, paid losses and self-insurance costs reported on Worksheet S–2, columns 1 through 3, line 118.

For hospital-based IPFs, we are proposing to assume that the PLI weight for the total facility is similar to the hospital-based IPF unit since the only data reported on this worksheet is for the entire facility. Therefore, hospital-based IPF PLI costs are equal to total facility PLI (as reported on Worksheet S–2, columns 1 through 3, line 118) divided by total facility costs (as reported on Worksheet A, columns 1 and 2, line 200) times hospital-based IPF Medicare allowable total costs. Our assumption is that the same proportion of expenses are used among each unit of the hospital.

This is the same methodology used to derive the 2012-based IPF market basket.

Home Office/Related Organization Contract Labor Costs

For the 2016-based IPF market basket, we are proposing to determine the home office/related organization contract labor costs using Medicare cost report data. This is a different methodology compared to the 2012-based IPF market basket. We believe this proposed methodology is an improvement as it is based on the data directly submitted by providers on the Medicare cost report. It is also consistent with the methodology we adopted when we rebased and revised the 2014-based IPPS market basket (82 FR 38159).

For hospital-based IPFs, we are proposing to calculate the home office contract labor cost weight using data reported on Worksheet S–3, part II, column 4, lines 14, 1401, 1402, 2550, and 2551 and total facility costs (Worksheet B, part 1, column 26, line 202). We are proposing to use total facility costs as the denominator for calculating the home office contract labor cost weight as these expenses reported on Worksheet S–3, part II reflect the entire hospital facility. Our assumption is that the same proportion of expenses is used among each unit of the hospital. Similar to the other market basket costs weights, we are proposing to trim the Home Office Contract Labor cost weight to remove outliers. Since not all hospital-based IPFs will have home office contract labor costs, we are proposing to trim the top one percent of the Home Office Contract Labor cost weight. This is the same trimming methodology used to calculate the Home Office Contract Labor cost weight in the 2016-based IPPS market basket. Using this proposed methodology, we calculate a Home Office Contract Labor cost weight for hospital-based IPFs of 3.7 percent. We discuss the trimming methodology for the other major cost categories in the ''Final Major Cost Category Computation'' section.

Freestanding IPFs are not required to complete Worksheet S–3, part II. Therefore, to estimate the Home Office Contract Labor cost weight, we are proposing the following methodology:

Step 1: Using hospital-based IPFs with a home office and also passing the one percent trim as described, we calculate the ratio of the Home Office Contract Labor cost weight to the Medicare allowable nonsalary, noncapital cost weight (Medicare allowable nonsalary, noncapital costs as a percent of total Medicare allowable costs).

Step 2: We identify freestanding IPFs that report a home office on Worksheet S–2, line 140—roughly 85 percent. We are proposing to calculate a Home Office Contract Labor cost weight for these freestanding IPFs by multiplying the ratio calculated in Step (1) by the Medicare allowable nonsalary, noncapital cost weight for those freestanding IPFs with a home office.

Step 3: We then calculate the freestanding IPF cost weight by multiplying the Home Office Contract Labor cost weight in step (2) by the total Medicare allowable costs for IPFs with a home office as a percent of total Medicare allowable costs for all freestanding IPFs.

To calculate the Home Office Contract Labor cost weight, we are proposing to weight together the freestanding Home Office Contract Labor cost weight (3.0 percent) and the hospital-based Home Office Contract Labor cost weight (3.7 percent) using total Medicare allowable costs. The resulting overall cost weight for Home Office is 3.5 percent (3.0 percent × 37 percent + 3.7 percent × 63 percent).

For the 2012-based IPF market basket, we calculated the Home Office Contract Labor cost weight using the Bureau of Economic Analysis Input-Output expense data for North American Industry Classification System (NAICS) code 55, Management of Companies and Enterprises using the methodology described in section III.A.3.a.iii (Derivation of the Detailed Operating Cost Weights).

Capital Costs

For freestanding IPFs, we are proposing capital costs to be equal to Medicare allowable capital costs as reported on Worksheet B, part II, column 26, lines 30 through 35, 50 through 76 (excluding 52 and 75), 90 through 91, and 93. This is the same methodology used for the 2012-based IPF market basket.

For hospital-based IPFs, we are proposing capital costs to be equal to IPF inpatient capital costs (as reported on Worksheet B, part II, column 26, line 40) and a portion of IPF ancillary capital costs. We calculate the portion of ancillary capital costs attributable to the hospital-based IPF for a given cost center by multiplying total facility ancillary capital costs for the specific ancillary cost center (as reported on Worksheet B, part II, column 26) by the ratio of IPF Medicare ancillary costs for the cost center (as reported on Worksheet D–3, column 3 for IPF subproviders) to total Medicare ancillary costs for the cost center (equal to the sum of Worksheet D–3, column 3 for all IPPS, SNF, IRF, and IPF). This is the same methodology used for the 2012-based IPF market basket.

ii. Final Major Cost Category Computation

After we derive costs for the seven major cost categories for each provider using the Medicare cost report data as described, we are proposing to trim the data for outliers. The proposed trimming methodology for the Home Office Contract Labor cost weight is slightly different than the proposed trimming methodology for the other six cost categories. For the Wages and Salaries, Employee Benefits, Contract Labor, Pharmaceuticals, Professional Liability Insurance, and Capital cost weights, we first divide the costs for each of these six categories by total Medicare allowable costs calculated for the provider to obtain cost weights for the universe of IPF providers. Next, we apply a mutually exclusive top and bottom 5 percent trim for each cost weight to remove outliers. After the outliers have been removed, we sum the costs for each category across all remaining providers. We then divide this by the sum of total Medicare allowable costs across all remaining providers to obtain a cost weight for the proposed 2016-based IPF market basket for the given category.

Finally, we calculate the residual ''All Other'' cost weight that reflects all remaining costs that are not captured in the seven cost categories listed. See Table 1 for the resulting cost weights for these major cost categories that we obtain from the Medicare cost reports.

TABLE 1—MAJOR COST CATEGORIES AS DERIVED FROM MEDICARE COST REPORTS

Major cost categories	Proposed 2016-based IPF market basket (percent)	2012-based IPF market basket (percent)
Wages and Salaries	51.2	51.0
Employee Benefits	13.5	13.1
Contract Labor	1.3	1.3
Professional Liability Insurance (Malpractice)	0.9	1.1
Pharmaceuticals	4.7	4.8
Home Office/Related Organization Contract Labor	3.5	n/a
Capital	7.1	7.0
''All Other'' Residual	17.9	21.6

* Total may not sum to 100 due to rounding.

As we did for the 2012-based IPF market basket, we are proposing to allocate the Contract Labor cost weight to the Wages and Salaries and Employee Benefits cost weights based on their relative proportions under the assumption that contract labor costs are comprised of both wages and salaries and employee benefits. The Contract Labor allocation proportion for Wages and Salaries is equal to the Wages and Salaries cost weight as a percent of the sum of the Wages and Salaries cost weight and the Employee Benefits cost weight. For the proposed rule, this rounded percentage was 79 percent; therefore, we are proposing to allocate 79 percent of the Contract Labor cost weight to the Wages and Salaries cost weight and 21 percent to the Employee Benefits cost weight. The 2012-based IPF market basket percentage was 80 percent. Table 2 shows the Wages and Salaries and Employee Benefit cost weights after Contract Labor cost weight allocation for both the proposed 2016-based IPF market basket and 2012-based IPF market basket.

TABLE 2—WAGES AND SALARIES AND EMPLOYEE BENEFITS COST WEIGHTS AFTER CONTRACT LABOR ALLOCATION

Major cost categories	Proposed 2016-based IPF market basket	2012-based IPF market basket
Wages and Salaries	52.2	52.1
Employee Benefits	13.8	13.4

iii. Derivation of the Detailed Operating Cost Weights

To further divide the ''All Other'' residual cost weight estimated from the 2016 Medicare Cost Report data into more detailed cost categories, we propose to use the 2012 Benchmark Input-Output (I–O) ''Use Tables/Before Redefinitions/Purchaser Value'' for NAICS 622000 Hospitals, published by the Bureau of Economic Analysis (BEA). These data, publicly available at *http://www.bea.gov/industry/io_annual.htm,* are the most recent data available at the time of rulemaking. For the 2012-based IPF market basket, we used the 2007 Benchmark I–O data.

The BEA Benchmark I–O data are scheduled for publication every five years. The 2012 Benchmark I–O data are derived from the 2012 Economic Census and are the building blocks for BEA's economic accounts. They represent the most comprehensive and complete set of data on the economic processes or mechanisms by which output is produced and distributed.[1] BEA also produces Annual I–O estimates; however, while based on a similar methodology, these estimates reflect less comprehensive and less detailed data sources and are subject to revision when benchmark data becomes available. Instead of using the less detailed Annual I–O data, we propose to inflate the 2012 Benchmark I–O data forward to 2016 by applying the annual price changes from the respective price proxies to the appropriate market basket cost categories obtained from the 2012 Benchmark I–O data. We then propose to calculate the cost shares that each cost category represents of the inflated 2016 data. These resulting 2016 cost shares are applied to the ''All Other'' residual cost weight to obtain the proposed detailed cost weights for the 2016-based IPF market basket. For example, the cost for Food: Direct Purchases represents 5.0 percent of the sum of the ''All Other'' 2016 Benchmark I–O Hospital Expenditures inflated to 2016. Therefore, the Food: Direct Purchases cost weight represents 5.0 percent of the 2016-based IPF market basket's ''All Other'' cost category (17.9 percent), yielding a ''final'' Food: Direct Purchases cost weight of 0.9 percent in the proposed 2016-based IPF market basket (0.05 * 17.9 percent = 0.9 percent).

Using this methodology, we propose to derive seventeen detailed IPF market basket cost category weights from the proposed 2016-based IPF market basket residual cost weight (17.9 percent). These categories are: (1) Electricity, (2) Fuel, Oil, and Gasoline, (3) Food: Direct Purchases, (4) Food: Contract Services, (5) Chemicals, (6) Medical Instruments, (7) Rubber and Plastics, (8) Paper and Printing Products, (9) Miscellaneous Products, (10) Professional Fees: Labor-related, (11) Administrative and Facilities Support Services, (12) Installation, Maintenance and Repair, (13) All Other Labor-related Services, (14) Professional Fees: Nonlabor-related, (15) Financial Services, (16) Telephone Services, and (17) All Other Nonlabor-related Services. We note that for the 2012-based IPF market basket, we had a Water and Sewerage cost weight. For the proposed 2016-based IPF market basket, we are proposing to include Water and Sewerage in the Electricity cost weight due to the small amount of costs in this category.

iv. Derivation of the Detailed Capital Cost Weights

As described in section III.A.3.a.i. of this proposed rule, we propose a Capital-Related cost weight of 7.1 percent as obtained from the 2016 Medicare cost reports for freestanding and hospital-based IPF providers. We propose to further separate this total Capital-Related cost weight into more detailed cost categories. Using 2016 Medicare cost reports, we are able to group Capital-Related costs into the following categories: Depreciation, Interest, Lease, and Other Capital-Related costs. For each of these categories, we propose to determine separately for hospital-based IPFs and freestanding IPFs what proportion of total capital-related costs the category represent.

For freestanding IPFs, we propose to derive the proportions for Depreciation, Interest, Lease, and Other Capital-related costs using the data reported by the IPF on Worksheet A–7, which is the same methodology used for the 2012-based IPF market basket.

For hospital-based IPFs, data for these four categories are not reported separately for the subprovider; therefore, we propose to derive these proportions using data reported on Worksheet A–7 for the total facility. We are assuming the cost shares for the overall hospital are representative for the hospital-based subprovider IPF unit. For example, if depreciation costs make up 60 percent of total capital costs for the entire facility, we believe it is reasonable to assume that the hospital-based IPF will also have a 60 percent proportion because it is a subprovider unit contained within the total facility. This is the same methodology used for the 2012-based IPF market basket.

In order to combine each detailed capital cost weight for freestanding and hospital-based IPFs into a single capital cost weight for the 2016-based IPF market basket, we propose to weight together the shares for each of the categories (Depreciation, Interest, Lease, and Other Capital-related costs) based on the share of total capital costs each provider type represents of the total capital costs for all IPFs for 2016. Applying this methodology results in proportions of total capital-related costs for Depreciation, Interest, Lease and Other Capital-related costs that are representative of the universe of IPF providers. This is the same methodology used for the 2012-based IPF market basket.

Next, we propose to allocate lease costs across each of the remaining detailed capital-related cost categories as was done in the 2012-based IPF market basket. This will result in three primary capital-related cost categories in the 2016-based IPF market basket: Depreciation, Interest, and Other Capital-Related costs. As done in the 2012-based IPF market basket, lease costs are unique in that they are not broken out as a separate cost category in the 2016-based IPF market basket, but rather we propose to proportionally distribute these costs among the cost categories of Depreciation, Interest, and Other Capital-Related, reflecting the assumption that the underlying cost structure of leases is similar to that of capital-related costs in general. As was

[1] *http://www.bea.gov/papers/pdf/IOmanual_092906.pdf.*

done under the 2012-based IPF market basket, we propose to assume that 10 percent of the lease costs as a proportion of total capital-related costs represents overhead and assign those costs to the Other Capital-Related cost category accordingly. We propose to distribute the remaining lease costs proportionally across the three cost categories (Depreciation, Interest, and Other Capital-Related) based on the proportion that these categories comprise of the sum of the Depreciation, Interest, and Other Capital-related cost categories (excluding lease expenses). This is the same methodology used for the 2012-based IPF market basket. The allocation of these lease expenses are shown in Table 3.

Finally, we propose to further divide the Depreciation and Interest cost categories. We propose to separate Depreciation into the following two categories: (1) Building and Fixed Equipment; and (2) Movable Equipment; and propose to separate Interest into the following two categories: (1) Government/Nonprofit; and (2) For-profit.

To disaggregate the Depreciation cost weight, we determine the percent of total Depreciation costs for IPFs that is attributable to Building and Fixed Equipment, which we hereafter refer to as the ''fixed percentage.'' For the proposed 2016-based IPF market basket, we propose to use slightly different methods to obtain the fixed percentages for hospital-based IPFs compared to freestanding IPFs.

For freestanding IPFs, we propose to use depreciation data from Worksheet A–7 of the 2016 Medicare cost reports. However, for hospital-based IPFs, we determined that the fixed percentage for the entire facility may not be representative of the IPF subprovider unit due to the entire facility likely employing more sophisticated movable assets that are not utilized by the hospital-based IPF. Therefore, for hospital-based IPFs, we propose to calculate a fixed percentage using: (1) Building and fixture capital costs allocated to the subprovider unit as reported on Worksheet B, part I line 40; and (2) building and fixture capital costs for the top five ancillary cost centers utilized by hospital-based IPFs. We propose to then weight these two fixed percentages (inpatient and ancillary) using the proportion that each capital cost type represents of total capital costs in the proposed 2016-based IPF market basket. We then propose to weight the fixed percentages for hospital-based and freestanding IPFs together using the proportion of total capital costs each provider type represents. For both freestanding and hospital-based IPFs, this is the same methodology used for the 2012-based IPF market basket.

To disaggregate the Interest cost weight, we determine the percent of total interest costs for IPFs that are attributable to government and nonprofit facilities, the ''nonprofit percentage.'' For the 2016-based IPF market basket, we propose to use interest costs data from Worksheet A–7 for both freestanding and hospital-based IPFs. We then determine the percent of total interest costs that are attributed to government and nonprofit IPFs separately for hospital-based and freestanding IPFs and weight the nonprofit percentages for hospital-based and freestanding IPFs together using the proportion of total capital costs each provider type represents. This is the same methodology used for the 2012-based IPF market basket.

Table 3 provides the proposed detailed capital cost share composition. These detailed capital cost share composition percentages are applied to the total Capital-Related cost weight of 7.1 percent determined in section III.A.3.a.i. of the proposed rule.

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Table 3: Capital Cost Share Composition for the Proposed 2016-Based IPF Market Basket

	Capital Cost Share Composition before Lease Expense Allocation	Capital Cost Share Composition after Lease Expense Allocation
Depreciation	**60%**	**74%**
Building and Fixed Equipment	43%	52%
Movable Equipment	18%	22%
Interest	**13%**	**16%**
Government/Nonprofit	10%	12%
For Profit	3%	4%
Lease	*20%*	*n/a*
Other	**7%**	**10%**

*Detail may not add to total due to rounding.

v. 2016-Based IPF Market Basket Cost Categories and Weights

Table 4 shows the cost categories and weights for the proposed 2016-based IPF market basket and the 2012-based IPF market basket.

Table 4: Proposed 2016-based IPF Market Basket Cost Weights Compared to 2012-based IPF Market Basket Cost Weights

Cost Category	Proposed 2016-based IPF Market Basket Cost Weight	2012-based IPF Market Basket Cost Weight
Total	**100.0**	**100.0**
Compensation	**66.0**	**65.5**
Wages and Salaries	52.2	52.1
Employee Benefits	13.8	13.4
Utilities	**1.1**	**1.7**
Electricity	0.8	0.8
Fuel, Oil, and Gasoline	0.3	0.9
Water & Sewerage	n/a	0.1
Professional Liability Insurance	**0.9**	**1.1**
Malpractice	0.9	1.1
All Other Products and Services	**24.9**	**24.6**
All Other Products	**10.7**	**11.5**
Pharmaceuticals	4.7	4.8
Food: Direct Purchases	0.9	1.4
Food: Contract Services	1.0	0.9
Chemicals	0.3	0.6
Medical Instruments	2.3	1.9
Rubber & Plastics	0.3	0.5
Paper and Printing Products	0.5	0.9
Miscellaneous Products	0.7	0.6
All Other Services	**14.2**	**13.1**
Labor-Related Services	**7.7**	**6.6**
Professional Fees: Labor-related	4.4	2.9
Administrative and Facilities Support Services	0.6	0.7
Installation, Maintenance, and Repair	1.3	1.6
All Other: Labor-related Services	1.4	1.5
Nonlabor-Related Services	**6.5**	**6.5**
Professional Fees: Nonlabor-related	4.5	2.6
Financial services	0.8	2.3
Telephone Services	0.3	0.6
All Other: Nonlabor-related Services	1.0	1.1

Capital-Related Costs	**7.1**	7.0
Depreciation	**5.3**	**5.2**
Fixed Assets	3.7	3.7
Movable Equipment	1.5	1.5
Interest Costs	**1.2**	**1.2**
Government/Nonprofit	0.9	1.0
For Profit	0.3	0.2
Other Capital-Related Costs	**0.7**	**0.6**

* Totals may not sum due to rounding.

b. Selection of Price Proxies

After developing the cost weights for the proposed 2016-based IPF market basket, we select the most appropriate wage and price proxies currently available to represent the rate of price change for each expenditure category. For the majority of the cost weights, we base the price proxies on Bureau of Labor Statistics (BLS) data and grouped them into one of the following BLS categories:

- *Employment Cost Indexes.* Employment Cost Indexes (ECIs) measure the rate of change in employment wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. ECIs are superior to Average Hourly Earnings (AHE) as price proxies for input price indexes because they are not affected by shifts in occupation or industry mix, and because they measure pure price change and are available by both occupational group and by industry. The industry ECIs are based on the NAICS and the occupational ECIs are based on the Standard Occupational Classification System (SOC).
- *Producer Price Indexes.* Producer Price Indexes (PPIs) measure the average change over time in the selling prices received by domestic producers for their output. The prices included in the PPI are from the first commercial transaction for many products and some services (*https://www.bls.gov/ppi/*).
- *Consumer Price Indexes.* Consumer Price Indexes (CPIs) measure the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services (*https://www.bls.gov/cpi/*). CPIs are only used when the purchases are similar to those of retail consumers rather than purchases at the producer level, or if no appropriate PPIs are available.

We evaluated the price proxies using the criteria of reliability, timeliness, availability, and relevance:

- *Reliability.* Reliability indicates that the index is based on valid statistical methods and has low sampling variability. Widely accepted statistical methods ensure that the data were collected and aggregated in a way that can be replicated. Low sampling variability is desirable because it indicates that the sample reflects the typical members of the population (and it is representative). (Sampling variability is variation that occurs by chance because only a sample was surveyed rather than the entire population.)
- *Timeliness.* Timeliness implies that the proxy is published regularly, preferably at least once a quarter. The market baskets are updated quarterly and, therefore, it is important for the underlying price proxies to be up-to-date, reflecting the most recent data available. We believe that using proxies that are published regularly (at least quarterly, whenever possible) helps to ensure that we are using the most recent data available to update the market basket. We strive to use publications that are disseminated frequently, because we believe that this is an optimal way to stay abreast of the most current data available.
- *Availability.* Availability means that the proxy is publicly available. We prefer that our proxies are publicly available because this will help ensure that our market basket updates are as transparent to the public as possible. In addition, this enables the public to be able to obtain the price proxy data on a regular basis.
- *Relevance.* Relevance means that the proxy is applicable and representative of the cost category weight to which it is applied. The CPIs, PPIs, and ECIs that we selected to propose in this regulation meet these criteria. Therefore, we believe that they continue to be the best measure of price changes for the cost categories to which they would be applied.

Table 12 lists all price proxies that we propose to use for the 2016-based IPF market basket. A detailed explanation of the price proxies we are proposing for each cost category weight is provided.

i. Price Proxies for the Operating Portion of the Proposed 2016-Based IPF Market Basket

Wages and Salaries

There is not a published wage proxy that we believe represents the occupational distribution of workers in IPFs. To measure wage price growth in the proposed 2016-based IPF market basket, we are proposing to apply a proxy blend based on six occupational subcategories within the Wages and Salaries category, which would reflect the IPF occupational mix, as was done for the 2012-based IPF market basket.

We are proposing to use the National Industry-Specific Occupational Employment and Wage estimates for NAICS 622200, Psychiatric & Substance Abuse Hospitals, published by the BLS Office of Occupational Employment Statistics (OES), as the data source for the wage cost shares in the wage proxy blend. We are proposing to use May 2016 OES data. Detailed information on the methodology for the national industry-specific occupational employment and wage estimates survey can be found at *http://www.bls.gov/oes/current/oes_tec.htm.* For the 2012-based IPF market basket, we used May 2012 OES data.

Based on the OES data, there are six wage subcategories: Management; NonHealth Professional and Technical; Health Professional and Technical; Health Service; NonHealth Service; and Clerical. Table 5 lists the 2016 occupational assignments for the six wage subcategories; these are the same occupational groups used in the 2012-based IPF market basket.

Table 5: 2016 Occupational Assignments for IPF Wage Blend

2016 Occupational Groupings	
Group 1	**Management**
11-0000	Management Occupations
Group 2	**NonHealth Professional & Technical**
13-0000	Business and Financial Operations Occupations
15-0000	Computer and Mathematical Occupations
19-0000	Life, Physical, and Social Science Occupations
23-0000	Legal Occupations
25-0000	Education, Training, and Library Occupations
27-0000	Arts, Design, Entertainment, Sports, and Media Occupations
Group 3	**Health Professional & Technical**
29-1021	Dentists, General
29-1031	Dietitians and Nutritionists
29-1051	Pharmacists
29-1062	Family and General Practitioners
29-1063	Internists, General
29-1066	Psychiatrists
29-1069	Physicians and Surgeons, All Other
29-1071	Physician Assistants
29-1122	Occupational Therapists
29-1123	Physical Therapists
29-1125	Recreational Therapists
29-1126	Respiratory Therapists
29-1127	Speech-Language Pathologists
29-1129	Therapists, All Other
29-1141	Registered Nurses
29-1171	Nurse Practitioners
29-1199	Health Diagnosing and Treating Practitioners, All Other
Group 4	**Health Service**
21-0000	Community and Social Services Occupations
29-2011	Medical and Clinical Laboratory Technologists
29-2012	Medical and Clinical Laboratory Technicians
29-2021	Dental Hygienists
29-2034	Radiologic Technologists
29-2041	Emergency Medical Technicians and Paramedics
29-2051	Dietetic Technicians
29-2052	Pharmacy Technicians

29-2053	Psychiatric Technicians
29-2061	Licensed Practical and Licensed Vocational Nurses
29-2071	Medical Records and Health Information Technicians
29-2099	Health Technologists and Technicians, All Other
29-9011	Occupational Health and Safety Specialists
29-9099	Healthcare Practitioner and Technical Workers, All Other
31-0000	Healthcare Support Occupations
Group 5	**NonHealth Service**
33-0000	Protective Service Occupations
35-0000	Food Preparation and Serving Related Occupations
37-0000	Building and Grounds Cleaning and Maintenance Occupations
39-0000	Personal Care and Service Occupations
41-0000	Sales and Related Occupations
47-0000	Construction and Extraction Occupations
49-0000	Installation, Maintenance, and Repair Occupations
51-0000	Production Occupations
53-0000	Transportation and Material Moving Occupations
Group 6	**Clerical**
43-0000	Office and Administrative Support Occupations

Total expenditures by occupation (that is, occupational assignment) were calculated by taking the OES number of employees multiplied by the OES annual average salary. These expenditures were aggregated based on the six groups in Table 5. We next calculated the proportion of each group's expenditures relative to the total expenditures of all six groups. These proportions, listed in Table 6, represent the weights used in the wage proxy blend. We then propose to use the published wage proxies in Table 6 for each of the six groups (that is, wage subcategories) as we believe these six price proxies are the most technically appropriate indices available to measure the price growth of the Wages and Salaries cost category. These are the same price proxies used in the 2012-based IPF market basket.

Table 6: 2016-Based IPF Market Basket Wage Proxy Blend

Wage Subcategory	2016-based Wage Blend Weight	2012-based Wage Blend Weight	Price Proxy	BLS Series ID
Health Service	36.3%	36.2%	ECI for Wages and Salaries for All Civilian workers in Healthcare and Social Assistance	CIU10262000000001
Health Professional and Technical	34.9%	33.5%	ECI for Wages and Salaries for All Civilian workers in Hospitals	CIU10262200000001
NonHealth Service	8.9%	9.2%	ECI for Wages and Salaries for Private Industry workers in Service Occupations	CIU20200003000001
NonHealth Professional and Technical	7.0%	7.3%	ECI for Wages and Salaries for Private Industry workers in Professional, Scientific, and Technical Services	CIU20254000000001
Management	6.8%	7.1%	ECI for Wages and Salaries for Private Industry workers in Management, Business, and Financial	CIU20200001100001
Clerical	6.1%	6.7%	ECI for Wages and Salaries for Private Industry workers in Office and Administrative Support	CIU20200002200001
Total	100.0	100.0		

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A comparison of the yearly changes from FY 2017 to FY 2020 for the proposed 2016-based IPF wage blend and the 2012-based IPF wage blend is shown in Table 7. The average annual growth rate is the same for both price proxies over 2017–2020.

TABLE 7—FISCAL YEAR GROWTH IN THE 2016-BASED IPF WAGE PROXY BLEND AND 2012-BASED IPF WAGE PROXY BLEND

	2017	2018	2019	2020	Average 2017–2020
2016-based IPF Proposed Wage Proxy Blend	2.4	2.6	3.0	3.3	2.8
2012-based IPF Wage Proxy Blend	2.4	2.6	3.0	3.2	2.8

**Source: IHS Global Inc., 4th Quarter 2018 forecast with historical data through 3rd Quarter 2018.

Benefits

To measure benefits price growth in the 2016-based IPF market basket, we are proposing to apply a benefits proxy blend based on the same six subcategories and the same six blend weights for the wage proxy blend. These subcategories and blend weights are listed in Table 8.

The benefit ECIs, listed in Table 8, are not publically available. Therefore, an ''ECIs for Total Benefits'' is calculated using publically available ''ECIs for Total Compensation'' for each subcategory and the relative importance of wages within that subcategory's total compensation. This is the same benefits ECI methodology that we implemented in our 2012-based IPF market basket as well as used in the IPPS, SNF, Home Health Agency (HHA), Rehabilitation, Psychiatric, and Long-Term Care (RPL), Long-Term Care Hospital (LTCH), and End-Stage Renal Disease (ESRD) market baskets. We believe that the six price proxies listed in Table 8 are the most technically appropriate indices to measure the price growth of the Benefits cost category in the proposed 2016-based IPF market basket.

TABLE 8—PROPOSED 2016-BASED IPF MARKET BASKET BENEFITS PROXY BLEND

Wage subcategory	2016-based benefit blend weight	2012-based benefit blend weight	Price proxy
Health Service	36.3(%)	36.2	ECI for Total Benefits for All Civilian workers in Healthcare and Social Assistance.
Health Professional and Technical	34.9	33.5	ECI for Total Benefits for All Civilian workers in Hospitals.
NonHealth Service	8.9	9.2	ECI for Total Benefits for Private Industry workers in Service Occupations.
NonHealth Professional and Technical.	7.0	7.3	ECI for Total Benefits for Private Industry workers in Professional, Scientific, and Technical Services.
Management	6.8	7.1	ECI for Total Benefits for Private Industry workers in Management, Business, and Financial.
Clerical	6.1	6.7	ECI for Total Benefits for Private Industry workers in Office and Administrative Support.
Total	100.0	100.0	

A comparison of the yearly changes from FY 2017 to FY 2020 for the proposed 2016-based IPF benefit proxy blend and the 2012-based IPF benefit proxy is shown in Table 9. The average annual growth rate is the same for both price proxies over 2017–2020.

TABLE 9—FISCAL YEAR GROWTH IN THE PROPOSED 2016-BASED IPF BENEFIT PROXY BLEND AND 2012-BASED IPF BENEFIT PROXY BLEND

	2017	2018	2019	2020	Average 2017–2020
2016-based IPF Proposed Benefit Proxy Blend	1.9	2.1	2.8	3.3	2.5
2012-based IPF Benefit Proxy Blend	1.9	2.1	2.8	3.3	2.5

Source: IHS Global Inc., 4th Quarter 2018 forecast with historical data through 3rd Quarter 2018.

Electricity

We are proposing to continue to use the PPI Commodity Index for Commercial Electric Power (BLS series code WPU0542) to measure the price growth of this cost category. This is the same price proxy used in the 2012-based IPF market basket.

Fuel, Oil, and Gasoline

Similar to the 2012-based IPF market basket, for the 2016-based IPF market basket, we are proposing to use a blend of the PPI for Petroleum Refineries and the PPI Commodity for Natural Gas. Our analysis of the BEA's 2012 Benchmark I–O data (use table before redefinitions, purchaser's value for NAICS 622000 [Hospitals]) shows that Petroleum Refineries expenses accounts for approximately 90 percent and Natural Gas accounts for approximately 10 percent of Hospitals (NAICS 622000) total Fuel, Oil, and Gasoline expenses. Therefore, we propose to use a blend of 90 percent of the PPI for Petroleum Refineries (BLS series code PCU324110324110) and 10 percent of the PPI Commodity Index for Natural Gas (BLS series code WPU0531) as the price proxy for this cost category. The 2012-based IPF market basket used a 70/30 blend of these price proxies, reflecting the 2007 I–O data. We believe that these two price proxies continue to be the most technically appropriate indices available to measure the price growth of the Fuel, Oil, and Gasoline cost category in the proposed 2016-based IPF market basket.

Professional Liability Insurance

We are proposing to continue to use the CMS Hospital Professional Liability Index to measure changes in professional liability insurance (PLI) premiums. To generate this index, we collect commercial insurance premiums for a fixed level of coverage while holding non-price factors constant (such as a change in the level of coverage). This is the same proxy used in the 2012-based IPF market basket.

Pharmaceuticals

We are proposing to continue to use the PPI for Pharmaceuticals for Human Use, Prescription (BLS series code WPUSI07003) to measure the price growth of this cost category. This is the same proxy used in the 2012-based IPF market basket.

Food: Direct Purchases

We are proposing to continue to use the PPI for Processed Foods and Feeds (BLS series code WPU02) to measure the price growth of this cost category. This is the same proxy used in the 2012-based IPF market basket.

Food: Contract Purchases

We are proposing to continue to use the CPI for Food Away From Home (BLS series code CUUR0000SEFV) to measure the price growth of this cost category. This is the same proxy used in the 2012-based IPF market basket.

Chemicals

Similar to the 2012-based IPF market basket, we are proposing to use a four part blended PPI as the proxy for the chemical cost category in the proposed 2016-based IPF market basket. The proposed blend is composed of the PPI for Industrial Gas Manufacturing Primary Products (BLS series code PCU325120325120P), the PPI for Other Basic Inorganic Chemical Manufacturing (BLS series code PCU32518–32518-), the PPI for Other Basic Organic Chemical Manufacturing (BLS series code PCU32519–32519-), and the PPI for Other Miscellaneous Chemical Product Manufacturing (BLS series code PCU325998325998).

We note that the four part blended PPI used in the 2012-based IPF market basket is composed of the PPI for Industrial Gas Manufacturing (BLS series code PCU325120325120P), the PPI for Other Basic Inorganic Chemical

Manufacturing (BLS series code PCU32518–32518-), the PPI for Other Basic Organic Chemical Manufacturing (BLS series code PCU32519–32519–), and the PPI for Soap and Cleaning Compound Manufacturing (BLS series code PCU32561–32561–).

We are proposing to derive the weights for the PPIs using the 2012 Benchmark I–O data. The 2012-based IPF market basket used the 2007 Benchmark I–O data to derive the weights for the four PPIs.

Table 10 shows the weights for each of the four PPIs used to create proposed blended Chemical proxy for the proposed 2016 IPF market basket compared to the 2012-based blended Chemical proxy.

TABLE 10—BLENDED CHEMICAL PPI WEIGHTS

Name	Proposed 2016-based IPF weights (%)	2012-based IPF weights (%)	NAICS
PPI for Industrial Gas Manufacturing	19	32	325120
PPI for Other Basic Inorganic Chemical Manufacturing	13	17	325180
PPI for Other Basic Organic Chemical Manufacturing	60	45	325190
PPI for Soap and Cleaning Compound Manufacturing	n/a	6	325610
PPI for Other Miscellaneous Chemical Product Manufacturing	8	n/a	325998

Medical Instruments

We are proposing to continue to use a blend of two PPIs for the Medical Instruments cost category. The 2012 Benchmark I–O data shows an approximate 57/43 split between Surgical and Medical Instruments and Medical and Surgical Appliances and Supplies for this cost category. Therefore, we propose a blend composed of 57 percent of the commodity-based PPI for Surgical and Medical Instruments (BLS series code WPU1562) and 43 percent of the commodity-based PPI for Medical and Surgical Appliances and Supplies (BLS series code WPU1563). The 2012-based IPF market basket used a 50/50 blend of these PPIs based on the 2007 Benchmark I–O data.

Rubber and Plastics

We are proposing to continue to use the PPI for Rubber and Plastic Products (BLS series code WPU07) to measure price growth of this cost category. This is the same proxy used in the 2012-based IPF market basket.

Paper and Printing Products

We are proposing to continue to use the PPI for Converted Paper and Paperboard Products (BLS series code WPU0915) to measure the price growth of this cost category. This is the same proxy used in the 2012-based IPF market basket.

Miscellaneous Products

We are proposing to continue to use the PPI for Finished Goods Less Food and Energy (BLS series code WPUFD4131) to measure the price growth of this cost category. This is the same proxy used in the 2012-based IPF market basket.

Professional Fees: Labor-Related

We are proposing to continue to use the ECI for Total Compensation for Private Industry workers in Professional and Related (BLS series code CIU2010000120000I) to measure the price growth of this category. This is the same proxy used in the 2012-based IPF market basket.

Administrative and Facilities Support Services

We are proposing to continue to use the ECI for Total Compensation for Private Industry workers in Office and Administrative Support (BLS series code CIU2010000220000I) to measure the price growth of this category. This is the same proxy used in the 2012-based IPF market basket.

Installation, Maintenance, and Repair

We are proposing to continue to use the ECI for Total Compensation for Civilian workers in Installation, Maintenance, and Repair (BLS series code CIU1010000430000I) to measure the price growth of this cost category. This is the same proxy used in the 2012-based IPF market basket.

All Other: Labor-Related Services

We are proposing to continue to use the ECI for Total Compensation for Private Industry workers in Service Occupations (BLS series code CIU2010000300000I) to measure the price growth of this cost category. This is the same proxy used in the 2012-based IPF market basket.

Professional Fees: Nonlabor-Related

We are proposing to continue to use the ECI for Total Compensation for Private Industry workers in Professional and Related (BLS series code CIU2010000120000I) to measure the price growth of this category. This is the same proxy used in the 2012-based IPF market basket.

Financial Services

We are proposing to continue to use the ECI for Total Compensation for Private Industry workers in Financial Activities (BLS series code CIU201520A000000I) to measure the price growth of this cost category. This is the same proxy used in the 2012-based IPF market basket.

Telephone Services

We are proposing to continue to use the CPI for Telephone Services (BLS series code CUUR0000SEED) to measure the price growth of this cost category. This is the same proxy used in the 2012-based IPF market basket.

All Other: Nonlabor-Related Services

We are proposing to continue to use the CPI for All Items Less Food and Energy (BLS series code CUUR0000SA0L1E) to measure the price growth of this cost category. This is the same proxy used in the 2012-based IPF market basket.

ii. Price Proxies for the Capital Portion of the Proposed 2016-Based IPF Market Basket

Capital Price Proxies Prior to Vintage Weighting

We are proposing to continue to use the same price proxies for the capital-related cost categories as were applied in the 2012-based IPF market basket, which are provided and described in Table 12. Specifically, we are proposing to proxy:

- *Depreciation:* Building and Fixed Equipment cost category by BEA's Chained Price Index for Nonresidential Construction for Hospitals and Special Care Facilities (BEA Table 5.4.4. Price

Indexes for Private Fixed Investment in Structures by Type).

- *Depreciation:* Movable Equipment cost category by the PPI for Machinery and Equipment (BLS series code WPU11).
- Nonprofit Interest cost category by the average yield on domestic municipal bonds (Bond Buyer 20-bond index).
- For-profit Interest cost category by the average yield on Moody's Aaa bonds (Federal Reserve).
- Other Capital-Related cost category by the CPI–U for Rent of Primary Residence (BLS series code CUUS0000SEHA).

We believe that these are the most appropriate proxies for IPF capital-related costs that meet our selection criteria of relevance, timeliness, availability, and reliability. We are also proposing to continue to vintage weight the capital price proxies for Depreciation and Interest in order to capture the long-term consumption of capital. This vintage weighting method is similar to the method used for the 2012-based IPF market basket and is described in the section labeled Vintage Weights for Price Proxies.

Vintage Weights for Price Proxies

Because capital is acquired and paid for over time, capital-related expenses in any given year are determined by both past and present purchases of physical and financial capital. The vintage-weighted capital-related portion of the proposed 2016-based IPF market basket is intended to capture the long-term consumption of capital, using vintage weights for depreciation (physical capital) and interest (financial capital). These vintage weights reflect the proportion of capital-related purchases attributable to each year of the expected life of building and fixed equipment, movable equipment, and interest. We are proposing to use vintage weights to compute vintage-weighted price changes associated with depreciation and interest expenses.

Capital-related costs are inherently complicated and are determined by complex capital-related purchasing decisions, over time, based on such factors as interest rates and debt financing. In addition, capital is depreciated over time instead of being consumed in the same period it is purchased. By accounting for the vintage nature of capital, we are able to provide an accurate and stable annual measure of price changes. Annual non-vintage price changes for capital are unstable due to the volatility of interest rate changes and, therefore, do not reflect the actual annual price changes for IPF capital-related costs. The capital-related component of the proposed 2016-based IPF market basket reflects the underlying stability of the capital-related acquisition process.

The methodology used to calculate the vintage weights for the proposed 2016-based IPF market basket is the same as that used for the 2012-based IPF market basket with the only difference being the inclusion of more recent data. To calculate the vintage weights for depreciation and interest expenses, we first need a time series of capital-related purchases for building and fixed equipment and movable equipment. We found no single source that provides an appropriate time series of capital-related purchases by hospitals for all of the listed components of capital purchases. The early Medicare cost reports did not have sufficient capital-related data to meet this need. Data we obtained from the American Hospital Association (AHA) do not include annual capital-related purchases. However, the AHA does provide a consistent database of total expenses back to 1963. Consequently, we are proposing to use data from the AHA Panel Survey and the AHA Annual Survey to obtain a time series of total expenses for hospitals. We then are proposing to use data from the AHA Panel Survey supplemented with the ratio of depreciation to total hospital expenses obtained from the Medicare cost reports to derive a trend of annual depreciation expenses for 1963 through 2016. We are proposing to separate these depreciation expenses into annual amounts of building and fixed equipment depreciation and movable equipment depreciation as previously determined. From these annual depreciation amounts we derive annual end-of-year book values for building and fixed equipment and movable equipment using the expected life for each type of asset category. While data are not available that are specific to IPFs, we believe this information for all hospitals serves as a reasonable alternative for the pattern of depreciation for IPFs.

To continue to calculate the vintage weights for depreciation and interest expenses, we also need the expected lives for Building and Fixed Equipment, Movable Equipment, and Interest for the proposed 2016-based IPF market basket. We are proposing to calculate the expected lives using Medicare cost report data from freestanding and hospital-based IPFs. The expected life of any asset can be determined by dividing the value of the asset (excluding fully depreciated assets) by its current year depreciation amount. This calculation yields the estimated expected life of an asset if the rates of depreciation were to continue at current year levels, assuming straight-line depreciation. We are proposing to determine the expected life of building and fixed equipment separately for hospital-based IPFs and freestanding IPFs and weight these expected lives using the percent of total capital costs each provider type represents. We are proposing to apply a similar method for movable equipment. Using these proposed methods, we determined the average expected life of building and fixed equipment to be equal to 22 years, and the average expected life of movable equipment to be equal to 11 years. For the expected life of interest, we believe vintage weights for interest should represent the average expected life of building and fixed equipment because, based on previous research described in the FY 1997 IPPS final rule (61 FR 46198), the expected life of hospital debt instruments and the expected life of buildings and fixed equipment are similar. We note that for the 2012-based IPF market basket the expected life of building and fixed equipment is 23 years and the expected life of movable equipment is 11 years.

Multiplying these expected lives by the annual depreciation amounts results in annual year-end asset costs for building and fixed equipment and movable equipment. We then calculate a time series, beginning in 1964, of annual capital purchases by subtracting the previous year's asset costs from the current year's asset costs.

For the building and fixed equipment and movable equipment vintage weights, we are proposing to use the real annual capital-related purchase amounts for each asset type to capture the actual amount of the physical acquisition, net of the effect of price inflation. These real annual capital-related purchase amounts are produced by deflating the nominal annual purchase amount by the associated price proxy as provided. For the interest vintage weights, we are proposing to use the total nominal annual capital-related purchase amounts to capture the value of the debt instrument (including, but not limited to, mortgages and bonds). Using these capital-related purchase time series specific to each asset type, we are proposing to calculate the vintage weights for building and fixed equipment, for movable equipment, and for interest.

The vintage weights for each asset type are deemed to represent the average purchase pattern of the asset over its expected life (in the case of building and fixed equipment and interest, 22 years, and in the case of movable equipment, 11 years). For each

asset type, we used the time series of annual capital-related purchase amounts available from 2016 back to 1964. These data allow us to derive thirty-two 22-year periods of capital-related purchases for building and fixed equipment and interest, and forty-two 11-year periods of capital-related purchases for movable equipment. For each 22-year period for building and fixed equipment and interest, or 11-year period for movable equipment, we calculate annual vintage weights by dividing the capital-related purchase amount in any given year by the total amount of purchases over the entire 22-year or 11-year period. This calculation is done for each year in the 22-year or 11-year period and for each of the periods for which we have data. We then calculate the average vintage weight for a given year of the expected life by taking the average of these vintage weights across the multiple periods of data.

The vintage weights for the capital-related portion of the proposed 2016-based IPF market baskets and the 2012-based IPF market basket are presented in Table 11.

TABLE 11—PROPOSED 2016-BASED IPF MARKET BASKET AND 2012-BASED IPF MARKET BASKET VINTAGE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES

Year	Building and fixed equipment		Movable equipment		Interest	
	2016-based 22 years	2012-based 23 years	2016-based 11 years	2012-based 11 years	2016-based 22 years	2012-based 23 years
1	0.035	0.029	0.071	0.069	0.021	0.017
2	0.036	0.031	0.075	0.073	0.023	0.019
3	0.038	0.034	0.080	0.077	0.025	0.022
4	0.038	0.036	0.085	0.083	0.026	0.024
5	0.040	0.037	0.087	0.087	0.029	0.026
6	0.042	0.039	0.091	0.091	0.031	0.028
7	0.042	0.040	0.095	0.096	0.033	0.030
8	0.041	0.041	0.099	0.100	0.033	0.032
9	0.042	0.042	0.102	0.103	0.036	0.035
10	0.043	0.044	0.105	0.107	0.038	0.038
11	0.046	0.045	0.110	0.114	0.042	0.040
12	0.047	0.045	.....	.....	0.045	0.042
13	0.048	0.045	.....	.....	0.048	0.044
14	0.049	0.046	.....	.....	0.052	0.046
15	0.050	0.046	.....	.....	0.055	0.048
16	0.050	0.048	.....	.....	0.057	0.053
17	0.051	0.049	.....	.....	0.060	0.057
18	0.053	0.050	.....	.....	0.065	0.060
19	0.053	0.051	.....	.....	0.068	0.063
20	0.053	0.051	.....	.....	0.069	0.066
21	0.052	0.051	.....	.....	0.070	0.067
22	0.052	0.050	.....	.....	0.072	0.069
23	.....	0.052	.....	.....	.....	0.073
Total	1.000	1.000	1.000	1.000	1.000	1.000

Note: Numbers may not add to total due to rounding.

The process of creating vintage-weighted price proxies requires applying the vintage weights to the price proxy index where the last applied vintage weight in Table 11 is applied to the most recent data point. We have provided on the CMS website an example of how the vintage weighting price proxies are calculated, using example vintage weights and example price indices. The example can be found at the following link: *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.html* in the zip file titled ''Weight Calculations as described in the IPPS FY 2010 Proposed Rule.''

iii. Summary of Price Proxies of the Proposed 2016-Based IPF Market Basket

Table 12 shows both the operating and capital price proxies for the proposed 2016-based IPF Market Basket.

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Table 12: Price Proxies for the Proposed 2016-based IPF Market Basket

Cost Description	Price Proxies	Weight (percent)
Total		**100.0**
Compensation		**66.0**
Wages and Salaries	Blended Wages and Salaries Price Proxy	52.2
Employee Benefits	Blended Benefits Price Proxy	13.8
Utilities		**1.1**
Electricity	PPI for Commercial Electric Power	0.8
Fuel, Oil, and Gasoline	Blend of the PPI for Petroleum Refineries and PPI for Natural Gas	0.3
Professional Liability Insurance		**0.9**
Malpractice	CMS Hospital Professional Liability Insurance Premium Index	0.9
All Other Products and Services		**24.9**
All Other Products		**10.7**
Pharmaceuticals	PPI for Pharmaceuticals for human use, prescription	4.7
Food: Direct Purchases	PPI for Processed Foods and Feeds	0.9
Food: Contract Services	CPI-U for Food Away From Home	1.0
Chemicals	Blend of Chemical PPIs	0.3
Medical Instruments	Blend of the PPI for Surgical and medical instruments and PPI for Medical and surgical appliances and supplies	2.3
Rubber & Plastics	PPI for Rubber and Plastic Products	0.3
Paper and Printing Products	PPI for Converted Paper and Paperboard Products	0.5
Miscellaneous Products	PPI for Finished Goods Less Food and Energy	0.7
All Other Services		**14.2**
Labor-Related Services		**7.7**
Professional Fees: Labor-related	ECI for Total compensation for Private industry workers in Professional and related	4.4
Administrative and Facilities Support Services	ECI for Total compensation for Private industry workers in Office and administrative support	0.6
Installation, Maintenance, and Repair	ECI for Total compensation for Civilian workers in Installation, maintenance, and repair	1.3
All Other: Labor-related Services	ECI for Total compensation for Private industry workers in Service occupations	1.4
Nonlabor-Related Services		**6.5**
Professional Fees: Nonlabor-related	ECI for Total compensation for Private industry workers in Professional and related	4.5
Financial services	ECI for Total compensation for Private industry workers in Financial activities	0.8
Telephone Services	CPI-U for Telephone Services	0.3
All Other: Nonlabor-related Services	CPI-U for All Items Less Food and Energy	1.0

Capital-Related Costs		**7.1**
Depreciation		**5.3**
Fixed Assets	BEA chained price index for nonresidential construction for hospitals and special care facilities - vintage weighted (22 years)	3.7
Movable Equipment	PPI for machinery and equipment - vintage weighted (11 years)	1.5
Interest Costs		**1.2**
Government/Nonprofit	Average yield on domestic municipal bonds (Bond Buyer 20 bonds) - vintage weighted (22 years)	0.9
For Profit	Average yield on Moody's Aaa bonds - vintage weighted (22 years)	0.3
Other Capital-Related Costs	CPI-U for Rent of primary residence	0.7

Note: Totals may not sum to 100.0 percent due to rounding

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4. FY 2020 Market Basket Update

For FY 2020 (that is, beginning October 1, 2019 and ending September 30, 2020), we propose to use an estimate of the 2016-based IPF market basket increase factor to update the IPF PPS base payment rate. Consistent with historical practice, we estimate the market basket update for the IPF PPS based on IHS Global Inc.'s (IGI) forecast. IGI is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets and multifactor productivity (MFP).

Using IGI's fourth quarter 2018 forecast with historical data through the third quarter of 2018, the projected proposed 2016-based IPF market basket increase factor for FY 2020 is 3.1 percent. We are proposing that if more recent data are subsequently available (for example, a more recent estimate of the market basket) we would use such data, to determine the FY 2020 update in the final rule. For comparison, the current 2012-based IPF market basket is also projected to increase by 3.1 percent in FY 2020 based on IGI's fourth quarter 2018 forecast. Table 13 compares the proposed 2016-based IPF market basket and the 2012-based IPF market basket percent changes.

TABLE 13—PROPOSED 2016-BASED IPF MARKET BASKET AND 2012-BASED IPF MARKET BASKET PERCENT CHANGES, FY 2015 THROUGH FY 2022

Fiscal year (FY)	Proposed 2016-based IPF market basket index percent change	2012-based IPF market basket index percent change
Historical data:		
FY 2015	1.9	1.8
FY 2016	1.9	1.9
FY 2017	2.4	2.5
FY 2018	2.6	2.6
Average 2015–2018	2.2	2.2
Forecast:		
FY 2019	2.9	2.9
FY 2020	3.1	3.1
FY 2021	3.1	3.2
FY 2022	3.1	3.1
Average 2019–2022	3.1	3.1

Note: These market basket percent changes do not include any further adjustments as may be statutorily required. Source: IHS Global Inc. 4th quarter 2018 forecast.

5. Productivity Adjustment

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the RY beginning in 2012 (that is, a RY that coincides with a FY) and each subsequent RY. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period) (the ''MFP adjustment''). The BLS publishes the official measure of private non-farm business MFP. We refer readers to the BLS website at *http://www.bls.gov/mfp* for the BLS historical published MFP data.

MFP is derived by subtracting the contribution of labor and capital inputs growth from output growth. The projections of the components of MFP are currently produced by IGI, a nationally recognized economic forecasting firm with which CMS contracts to forecast the components of the market baskets and MFP. For more information on the productivity adjustment, we refer reader to the discussion in the FY 2016 IPF PPS final rule (80 FR 46675).

For this FY 2020 proposed rule, using IGI's fourth quarter 2018 forecast, the MFP adjustment for FY 2020 (the 10-year moving average of MFP for the period ending FY 2020) is projected to be 0.5 percent. Thus, in accordance with section 1886(s)(2)(A)(i) of the Act, we are proposing to base the FY 2020 market basket update, which is used to determine the applicable percentage increase for the IPF payments, on the most recent estimate of the proposed 2016-based IPF market basket (currently estimated to be 3.1 percent based on IGI's fourth quarter 2018 forecast). We propose to then reduce this percentage increase of 3.1 percent by the current estimate of the MFP adjustment for FY 2020 of 0.5 percentage point (the 10-year moving average of MFP for the period ending FY 2020 based on IGI's fourth quarter 2018 forecast) yielding a productivity-adjusted IPF market basket update of 2.6 percent. In addition, for FY 2020 the proposed 2016-based IPF PPS market basket update is further reduced by 0.75 percentage point as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(E) of the Act. This statutory language specifies that the 0.75 percentage point other adjustment applies to rate years beginning in 2017, 2018, and 2019; since fiscal year 2020 begins on October 1, 2019, the 0.75 percentage point other adjustment applies to FY 2020. FY 2020 is the final year of the 0.75 percentage point other adjustment as required by section 1866(s)(3)(E) of the Act. This results in an estimated FY 2020 IPF PPS payment rate update of 1.85 percent ($3.1 - 0.5 - 0.75 = 1.85$ percent). Finally, we are proposing that if more recent data are subsequently available (for example, a more recent estimate of the market basket and MFP adjustment), we would use such data to determine the FY 2020 market basket update and MFP adjustment in the final rule.

6. Proposed Labor-Related Share for FY 2020

Due to variations in geographic wage levels and other labor-related costs, we believe that payment rates under the IPF PPS should continue to be adjusted by a geographic wage index, which would apply to the labor-related portion of the Federal per diem base rate (hereafter referred to as the labor-related share). The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We propose to continue to classify a cost category as labor-related if the costs are labor intensive and vary with the local labor market.

We are proposing to include in the labor-related share the sum of the relative importance of the following cost categories: Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Facilities Support Services, Installation, Maintenance, and Repair, All Other: Labor-related Services, and a portion of the Capital-Related cost weight from the proposed 2016-based IPF market basket. These are the same categories as the 2012-based IPF market basket.

Similar to the 2012-based IPF market basket, the proposed 2016-based IPF market basket includes two cost categories for nonmedical Professional fees (including but not limited to, expenses for legal, accounting, and engineering services). These are Professional Fees: Labor-related and Professional Fees: Nonlabor-related. For the proposed 2016-based IPF market basket, we propose to estimate the labor-related percentage of non-medical professional fees (and assign these expenses to the Professional Fees: Labor-related services cost category) based on the same method that was used to determine the labor-related percentage of professional fees in the 2012-based IPF market basket.

As was done in the 2012-based IPF market basket, we propose to determine the proportion of legal, accounting and auditing, engineering, and management consulting services that meet our definition of labor-related services based on a survey of hospitals conducted by CMS in 2008. We notified the public of our intent to conduct this survey on December 9, 2005 (70 FR 73250) and did not receive any public comments in response to the notice (71 FR 8588). A discussion of the composition of the survey and post-stratification can be found in the FY 2010 Inpatient Prospective Payment System (IPPS) Long-Term Care Hospital (LTCH) Prospective Payment System (PPS) final rule (74 FR 43850 through 43856). Based on the weighted results of the survey, we determined that hospitals purchase, on average, the following portions of contracted professional services outside of their local labor market:

- 34 percent of accounting and auditing services.
- 30 percent of engineering services.
- 33 percent of legal services.
- 42 percent of management consulting services.

We are proposing to apply each of these percentages to the respective 2012 Benchmark I–O cost category underlying the professional fees cost category to determine the Professional Fees: Nonlabor-related costs. The Professional Fees: Labor-related costs were determined to be the difference between the total costs for each Benchmark I–O category and the Professional Fees: Nonlabor-related costs. This is the same methodology that we used to separate the 2012-based IPF market basket professional fees category into Professional Fees: Labor-related and Professional Fees: Nonlabor-related cost categories.

In the proposed 2016-based IPF market basket, nonmedical professional fees that were subject to allocation based on these survey results represent 3.6 percent of total costs (and are limited to those fees related to Accounting & Auditing, Legal, Engineering, and Management Consulting services). Based on our survey results, we proposed to apportion 2.3 percentage points of the 3.6 percentage point figure into the Professional Fees: Labor-related share cost category and designate the remaining 1.3 percentage point into the Professional Fees: Nonlabor-related cost category.

In addition to the professional services listed, for the 2016-based IPF market basket, we are proposing to allocate a proportion of the Home Office Contract Labor cost weight, calculated using the Medicare cost reports, into the Professional Fees: Labor-related and Professional Fees: Nonlabor-related cost categories. We are proposing to classify these expenses as labor-related and nonlabor-related as many facilities are not located in the same geographic area as their home office and, therefore, do not meet our definition for the labor-related share that requires the services to be purchased in the local labor market.

Similar to the 2012-based IPF market basket, we are proposing for the 2016-based IPF market basket to use the Medicare cost reports for both freestanding IPF providers and hospital-based IPF providers to determine the home office labor-related percentages. The Medicare cost report requires a hospital to report information regarding their home office provider. Using information on the Medicare cost report, we then compare the location of the IPF with the location of the IPF's home office. We are proposing to classify an IPF with a home office located in their respective labor market if the IPF and its home office are located in the same Metropolitan Statistical Area (MSA). We then determine the proportion of the Home Office Contract Labor cost weight that should be allocated to the labor-related share based on the percent of total Medicare allowable costs for those IPFs that had home offices located in

their respective local labor markets of total Medicare allowable costs for IPFs with a home office. We determined an IPF's and its home office's MSA using their zip code information from the Medicare cost report. Using this methodology, we determined that 46 percent of IPFs' Medicare allowable costs were for home offices located in their respective local labor markets. Therefore, we are allocating 46 percent of the Home Office Contract Labor cost weight (1.6 percentage points = 3.5 percent times 46 percent) to the Professional Fees: Labor-related cost weight and 54 percent of the Home Office Contract Labor cost weight to the Professional Fees: Nonlabor-related cost weight (1.9 percentage points = 3.5 percent times 54 percent). For the 2012-based IPF market basket, we used a similar methodology but we relied on provider counts rather than total Medicare allowable costs to determine the labor-related percentage.

In summary, based on the two allocations mentioned earlier, we apportioned percentage points of the professional fees and home office/related organization contract labor cost weights into the Professional Fees: Labor-Related cost category. This amount was added to the portion of professional fees that we already identified as labor-related using the I–O data such as contracted advertising and marketing costs (approximately 0.5 percentage point of total costs) resulting in a Professional Fees: Labor-Related cost weight of 4.4 percent.

As stated, we are proposing to include in the labor-related share the sum of the relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-Related, Administrative and Facilities Support Services, Installation, Maintenance, and Repair, All Other: Labor-related Services, and a portion of the Capital-Related cost weight from the proposed 2016-based IPF market basket. The relative importance reflects the different rates of price change for these cost categories between the base year (2016) and FY 2020. Based on IHS Global Inc. 4th quarter 2018 forecast for the proposed 2016-based IPF market basket, the sum of the FY 2020 relative importance for Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Facilities Support Services, Installation Maintenance & Repair Services, and All Other: Labor-related Services is 73.7 percent. The portion of Capital costs that is influenced by the local labor market is estimated to be 46 percent, which is the same percentage applied to the 2012-based IPF market basket. Since the relative importance for Capital is 6.8 percent of the proposed 2016-based IPF market basket in FY 2020, we took 46 percent of 6.8 percent to determine the proposed labor-related share of Capital for FY 2020 of 3.1 percent. Therefore, we are proposing a total labor-related share for FY 2020 of 76.8 percent (the sum of 73.7 percent for the operating cost and 3.1 percent for the labor-related share of Capital). Table 14 shows the FY 2020 labor-related share using the proposed 2016-based IPF market basket relative importance and the FY 2019 labor-related share using the 2012-based IPF market basket.

TABLE 14—PROPOSED FY 2020 IPF LABOR-RELATED SHARE AND FY 2019 IPF LABOR-RELATED SHARE

	FY 2020 labor-related share based on proposed 2016-based IPF market basket [1]	FY 2019 final labor-related share based on 2012-based IPF market basket [2]
Wages and Salaries	52.3	52.0
Employee Benefits	13.7	13.2
Professional Fees: Labor-related [3]	4.4	2.8
Administrative and Facilities Support Services	0.6	0.7
Installation, Maintenance and Repair	1.3	1.6
All Other: Labor-related Services	1.4	1.5
Subtotal	73.7	71.8
Labor-related portion of capital (46%)	3.1	3.0
Total LRS	76.8	74.8

[1] IHS Global Inc. 4th quarter 2018 forecast.
[2] Based on IHS Global Inc. 2nd quarter 2018 forecast as published in the **Federal Register** (83 FR 38579).
[3] Includes all contract advertising and marketing costs and a portion of accounting, architectural, engineering, legal, management consulting, and home office contract labor costs.

B. Proposed Updates to the IPF PPS Rates for FY Beginning October 1, 2019

The IPF PPS is based on a standardized federal per diem base rate calculated from the IPF average per diem costs and adjusted for budget-neutrality in the implementation year. The federal per diem base rate is used as the standard payment per day under the IPF PPS and is adjusted by the patient-level and facility-level adjustments that are applicable to the IPF stay. A detailed explanation of how we calculated the average per diem cost appears in the November 2004 IPF PPS final rule (69 FR 66926).

1. Determining the Standardized Budget-Neutral Federal per Diem Base Rate

Section 124(a)(1) of the BBRA required that we implement the IPF PPS in a budget-neutral manner. In other words, the amount of total payments under the IPF PPS, including any payment adjustments, must be projected to be equal to the amount of total payments that would have been made if the IPF PPS were not implemented. Therefore, we calculated the budget-neutrality factor by setting the total estimated IPF PPS payments to be equal to the total estimated payments that would have been made under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) methodology had the IPF PPS not been implemented. A step-by-step description of the methodology used to estimate payments under the TEFRA payment system appears in the November 2004 IPF PPS Final rule (69 FR 66926).

Under the IPF PPS methodology, we calculated the final federal per diem base rate to be budget-neutral during the IPF PPS implementation period (that is, the 18-month period from January 1, 2005 through June 30, 2006) using a July 1 update cycle. We updated the average cost per day to the midpoint of the IPF PPS implementation period (October 1, 2005), and this amount was used in the payment model to establish the budget-neutrality adjustment.

Next, we standardized the IPF PPS federal per diem base rate to account for the overall positive effects of the IPF PPS payment adjustment factors by dividing total estimated payments under the TEFRA payment system by estimated payments under the IPF PPS. Additional information concerning this standardization can be found in the November 2004 IPF PPS final rule (69 FR 66932) and the RY 2006 IPF PPS final rule (71 FR 27045). We then reduced the standardized federal per diem base rate to account for the outlier policy, the stop loss provision, and anticipated behavioral changes. A complete discussion of how we calculated each component of the budget-neutrality adjustment appears in the November 2004 IPF PPS final rule (69 FR 66932 through 66933) and in the RY 2007 IPF PPS final rule (71 FR 27044 through 27046). The final standardized budget-neutral federal per diem base rate established for cost reporting periods beginning on or after January 1, 2005 was calculated to be $575.95.

The federal per diem base rate has been updated in accordance with applicable statutory requirements and § 412.428 through publication of annual notices or proposed and final rules. A detailed discussion on the standardized budget-neutral federal per diem base rate and the electroconvulsive therapy (ECT) payment per treatment appears in the FY 2014 IPF PPS update notice (78 FR 46738 through 46740). These documents are available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/index.html.*

IPFs must include a valid procedure code for ECT services provided to IPF beneficiaries in order to bill for ECT services, as described in our Medicare Claims Processing Manual, Chapter 3, Section 190.7.3 (available at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c03.pdf.*) There were no changes to the ECT procedure codes used on IPF claims as a result of the proposed update to the ICD–10–PCS code set for FY 2020. Addendum B–4 to this proposed rule shows the ECT procedure codes for FY 2020 and is available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

2. Proposed Update of the Federal per Diem Base Rate and Electroconvulsive Therapy Payment per Treatment

The current (FY 2019) federal per diem base rate is $782.78 and the ECT payment per treatment is $337.00. For the FY 2020 federal per diem base rate, we applied the payment rate update of 1.85 percent (that is, the 2016-based IPF market basket increase for FY 2020 of 3.1 percent less the productivity adjustment of 0.5 percentage point, and further reduced by the 0.75 percentage point required under section 1886(s)(3)(E) of the Act), and the wage index budget-neutrality factor of 1.0078 (as discussed in section III.D.1.f of this proposed rule) to the FY 2019 federal per diem base rate of $782.78, yielding a federal per diem base rate of $803.48 for FY 2020. Similarly, we applied the 1.85 percent payment rate update and the 1.0078 wage index budget-neutrality factor to the FY 2018 ECT payment per treatment, yielding an ECT payment per treatment of $345.91 for FY 2020.

Section 1886(s)(4)(A)(i) of the Act requires that for RY 2014 and each subsequent RY, in the case of an IPF that fails to report required quality data with respect to such rate year, the Secretary shall reduce any annual update to a standard federal rate for discharges during the RY by 2.0 percentage points. Therefore, we are applying a 2.0 percentage point reduction to the federal per diem base rate and the ECT payment per treatment as follows:

- For IPFs that fail requirements under the Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program, we applied a −0.15 percent payment rate update (that is, the IPF market basket increase for FY 2020 of 3.1 percent less the productivity adjustment of 0.5 percentage point, further reduced by the 0.75 percentage point for an update of 1.85 percent, and further reduced by 2 percentage points in accordance with section 1886(s)(4)(A)(ii) of the Act, which results in a negative update percentage) and the wage index budget-neutrality factor of 1.0078 to the FY 2019 federal per diem base rate of $782.78, yielding a federal per diem base rate of $787.70 for FY 2020.
- For IPFs that fail to meet requirements under the IPFQR Program, we applied the −0.15 percent annual payment rate update and the 1.0078 wage index budget-neutrality factor to the FY 2019 ECT payment per treatment of $337.00, yielding an ECT payment per treatment of $339.12 for FY 2020.

C. Proposed Updates to the IPF PPS Patient-Level Adjustment Factors

1. Overview of the IPF PPS Adjustment Factors

The IPF PPS payment adjustments were derived from a regression analysis of 100 percent of the FY 2002 Medicare Provider and Analysis Review (MedPAR) data file, which contained 483,038 cases. For a more detailed description of the data file used for the regression analysis, see the November 2004 IPF PPS final rule (69 FR 66935 through 66936). We continue to use the existing regression-derived adjustment factors established in 2005 for FY 2020. However, we have used more recent claims data to simulate payments to finalize the outlier fixed dollar loss threshold amount and to assess the impact of the IPF PPS updates.

2. IPF PPS Patient-Level Adjustments

The IPF PPS includes payment adjustments for the following patient-level characteristics: Medicare Severity Diagnosis Related Groups (MS–DRGs) assignment of the patient's principal diagnosis, selected comorbidities, patient age, and the variable per diem adjustments.

a. Proposed Update to MS–DRG Assignment

We believe it is important to maintain for IPFs the same diagnostic coding and Diagnosis Related Group (DRG) classification used under the Inpatient Prospective Payment System (IPPS) for providing psychiatric care. For this reason, when the IPF PPS was implemented for cost reporting periods beginning on or after January 1, 2005, we adopted the same diagnostic code set (ICD–9–CM) and DRG patient classification system (MS–DRGs) that were utilized at the time under the IPPS. In the RY 2009 IPF PPS notice (73 FR 25709), we discussed CMS' effort to better recognize resource use and the severity of illness among patients. CMS adopted the new MS–DRGs for the IPPS in the FY 2008 IPPS final rule with comment period (72 FR 47130). In the RY 2009 IPF PPS notice (73 FR 25716), we provided a crosswalk to reflect changes that were made under the IPF PPS to adopt the new MS–DRGs. For a detailed description of the mapping changes from the original DRG adjustment categories to the current MS–DRG adjustment categories, we refer readers to the RY 2009 IPF PPS notice (73 FR 25714).

The IPF PPS includes payment adjustments for designated psychiatric DRGs assigned to the claim based on the patient's principal diagnosis. The DRG adjustment factors were expressed relative to the most frequently reported psychiatric DRG in FY 2002, that is, DRG 430 (psychoses). The coefficient values and adjustment factors were derived from the regression analysis. Mapping the DRGs to the MS–DRGs resulted in the current 17 IPF MS–DRGs, instead of the original 15 DRGs, for which the IPF PPS provides an adjustment. For FY 2020, we are not proposing any changes to the IPF MS–DRG adjustment factors but propose to maintain the existing IPF MS–DRG adjustment factors.

In the FY 2015 IPF PPS final rule published August 6, 2014 in the **Federal Register** titled, ''Inpatient Psychiatric Facilities Prospective Payment System—Update for FY Beginning October 1, 2014 (FY 2015)'' (79 FR 45945 through 45947), we finalized conversions of the ICD–9–CM–based MS–DRGs to ICD–10–CM/PCS–based MS–DRGs, which were implemented on October 1, 2015. Further information on the ICD–10–CM/PCS MS–DRG conversion project can be found on the CMS ICD–10–CM website at *https://www.cms.gov/Medicare/Coding/ICD10/ICD-10-MS-DRG-Conversion-Project.html.*

For FY 2020, we propose to continue to make the existing payment adjustment for psychiatric diagnoses that group to one of the existing 17 IPF MS–DRGs listed in Addendum A. Addendum A is available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.* Psychiatric principal diagnoses that do not group to one of the 17 designated MS–DRGs will still receive the federal per diem base rate and all other applicable adjustments, but the payment will not include an MS–DRG adjustment.

The diagnoses for each IPF MS–DRG will be updated as of October 1, 2019, using the final IPPS FY 2020 ICD–10–CM/PCS code sets. The FY 2020 IPPS proposed rule includes tables of the proposed changes to the ICD–10–CM/PCS code sets which underlie the FY 2020 IPF MS–DRGs. Both the FY 2020 IPPS proposed rule and the tables of proposed changes to the ICD–10–CM/PCS code sets which underlie the FY 2020 MS–DRGs are available on the IPPS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html.*

Code First

As discussed in the ICD–10–CM Official Guidelines for Coding and Reporting, certain conditions have both an underlying etiology and multiple body system manifestations due to the underlying etiology. For such conditions, the ICD–10–CM has a coding convention that requires the underlying condition be sequenced first followed by the manifestation. Wherever such a combination exists, there is a ''use additional code'' note at the etiology code, and a ''code first'' note at the manifestation code. These instructional notes indicate the proper sequencing order of the codes (etiology followed by manifestation). In accordance with the ICD–10–CM Official Guidelines for Coding and Reporting, when a primary (psychiatric) diagnosis code has a ''code first'' note, the provider would follow the instructions in the ICD–10–CM text. The submitted claim goes through the CMS processing system, which will identify the primary diagnosis code as non-psychiatric and search the secondary codes for a psychiatric code to assign a DRG code for adjustment. The system will continue to search the secondary codes for those that are appropriate for comorbidity adjustment.

For more information on the code first policy, see our November 2004 IPF PPS final rule (69 FR 66945) and see sections I.A.13 and I.B.7 of the FY 2019 ICD–10–CM Coding Guidelines, available at *https://www.cdc.gov/nchs/icd/data/10cmguidelines-FY2019-final.pdf.* In the FY 2015 IPF PPS final rule, we provided a code first table for reference that highlights the same or similar manifestation codes where the code first instructions apply in ICD–10–CM that were present in ICD–9–CM (79 FR 46009). In FY 2018 and FY 2019, there were no changes to the final ICD–10–CM/PCS codes in the IPF Code First table. For FY 2020, there continue to be no changes to the ICD–10–CM/PCS codes in the proposed IPF Code First table. The proposed FY 2020 Code First table is shown in Addendum B–1 on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

b. Proposed Payment for Comorbid Conditions

The intent of the comorbidity adjustments is to recognize the increased costs associated with comorbid conditions by providing additional payments for certain existing medical or psychiatric conditions that are expensive to treat. In our RY 2012 IPF PPS final rule (76 FR 26451 through 26452), we explained that the IPF PPS includes 17 comorbidity categories and identified the new, revised, and deleted ICD–9–CM diagnosis codes that generate a comorbid condition payment adjustment under the IPF PPS for RY 2012 (76 FR 26451).

Comorbidities are specific patient conditions that are secondary to the patient's principal diagnosis and that require treatment during the stay. Diagnoses that relate to an earlier episode of care and have no bearing on the current hospital stay are excluded and must not be reported on IPF claims. Comorbid conditions must exist at the time of admission or develop subsequently, and affect the treatment received, length of stay (LOS), or both treatment and LOS.

For each claim, an IPF may receive only one comorbidity adjustment within a comorbidity category, but it may receive an adjustment for more than one comorbidity category. Current billing instructions for discharge claims, on or after October 1, 2015, require IPFs to enter the complete ICD–10–CM codes for up to 24 additional diagnoses if they co-exist at the time of admission, or develop subsequently and impact the treatment provided.

The comorbidity adjustments were determined based on the regression analysis using the diagnoses reported by IPFs in FY 2002. The principal diagnoses were used to establish the DRG adjustments and were not accounted for in establishing the comorbidity category adjustments, except where ICD–9–CM code first instructions applied. In a code first situation, the submitted claim goes through the CMS processing system, which will identify the principal diagnosis code as non-psychiatric and search the secondary codes for a psychiatric code to assign an MS–DRG code for adjustment. The system will continue to search the secondary codes for those that are appropriate for comorbidity adjustment.

As noted previously, it is our policy to maintain the same diagnostic coding set for IPFs that is used under the IPPS for providing the same psychiatric care. The 17 comorbidity categories formerly defined using ICD–9–CM codes were converted to ICD–10–CM/PCS in our FY 2015 IPF PPS final rule (79 FR 45947 through 45955). The goal for converting the comorbidity categories is referred to as replication, meaning that the payment adjustment for a given patient encounter is the same after ICD–10–CM implementation as it would be if the same record had been coded in ICD–9–CM and submitted prior to ICD–10–CM/

PCS implementation on October 1, 2015. All conversion efforts were made with the intent of achieving this goal. For FY 2020, we are proposing to use the same comorbidity adjustment factors in effect in FY 2019, which are found in Addendum A, available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

We have updated the ICD–10–CM/PCS codes which are associated with the existing IPF PPS comorbidity categories, based upon the proposed FY 2020 update to the ICD–10–CM/PCS code set. The proposed FY 2020 ICD–10–CM/PCS updates include 4 ICD–10–CM codes added to the Poisoning comorbidity category and 2 ICD–10–PCS codes added to the Oncology Procedures comorbidity category. These updates are detailed in Addenda B–2 and B–3 of this proposed rule, which are available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

In accordance with the policy established in the FY 2015 IPF PPS final rule (79 FR 45949 through 45952), we reviewed all new FY 2020 ICD–10–CM codes to remove site unspecified codes from the FY 2020 ICD–10–CM/PCS codes in instances where more specific codes are available. As we stated in the FY 2015 IPF PPS final rule, we believe that specific diagnosis codes that narrowly identify anatomical sites where disease, injury, or condition exists should be used when coding patients' diagnoses whenever these codes are available. We finalized that we would remove site unspecified codes from the IPF PPS ICD–10–CM/PCS codes in instances in which more specific codes are available, as the clinician should be able to identify a more specific diagnosis based on clinical assessment at the medical encounter. None of the proposed additions to the FY 2020 ICD–10–CM/PCS codes were site unspecified, therefore we are not removing any of the new codes.

c. Proposed Patient Age Adjustments

As explained in the November 2004 IPF PPS final rule (69 FR 66922), we analyzed the impact of age on per diem cost by examining the age variable (range of ages) for payment adjustments. In general, we found that the cost per day increases with age. The older age groups are more costly than the under 45 age group, the differences in per diem cost increase for each successive age group, and the differences are statistically significant. For FY 2020, we are proposing to continue to use the patient age adjustments currently in effect in FY 2019, as shown in Addendum A of this rule (see *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html*).

d. Proposed Variable per Diem Adjustments

We explained in the November 2004 IPF PPS final rule (69 FR 66946) that the regression analysis indicated that per diem cost declines as the length of stay (LOS) increases. The variable per diem adjustments to the federal per diem base rate account for ancillary and administrative costs that occur disproportionately in the first days after admission to an IPF. We used a regression analysis to estimate the average differences in per diem cost among stays of different lengths. As a result of this analysis, we established variable per diem adjustments that begin on day 1 and decline gradually until day 21 of a patient's stay. For day 22 and thereafter, the variable per diem adjustment remains the same each day for the remainder of the stay. However, the adjustment applied to day 1 depends upon whether the IPF has a qualifying ED. If an IPF has a qualifying ED, it receives a 1.31 adjustment factor for day 1 of each stay. If an IPF does not have a qualifying ED, it receives a 1.19 adjustment factor for day 1 of the stay. The ED adjustment is explained in more detail in section III.D.4 of this rule.

For FY 2020, we are proposing to continue to use the variable per diem adjustment factors currently in effect, as shown in Addendum A of this rule (available at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html*). A complete discussion of the variable per diem adjustments appears in the November 2004 IPF PPS final rule (69 FR 66946).

D. Proposed Updates to the IPF PPS Facility-Level Adjustments

The IPF PPS includes facility-level adjustments for the wage index, IPFs located in rural areas, teaching IPFs, cost of living adjustments for IPFs located in Alaska and Hawaii, and IPFs with a qualifying ED.

1. Wage Index Adjustment

a. Background

As discussed in the RY 2007 IPF PPS final rule (71 FR 27061), RY 2009 IPF PPS (73 FR 25719) and the RY 2010 IPF PPS notices (74 FR 20373), in order to provide an adjustment for geographic wage levels, the labor-related portion of an IPF's payment is adjusted using an appropriate wage index. Currently, an IPF's geographic wage index value is determined based on the actual location of the IPF in an urban or rural area, as defined in § 412.64(b)(1)(ii)(A) and (C).

b. Proposed Change to the IPF Wage Index Methodology

Due to the variation in costs and because of the differences in geographic wage levels, in the November 15, 2004 IPF PPS final rule, we required that payment rates under the IPF PPS be adjusted by a geographic wage index. We proposed and finalized a policy to use the unadjusted, pre-floor, pre-reclassified IPPS hospital wage index to account for geographic differences in IPF labor costs. We implemented use of the pre-floor, pre-reclassified IPPS hospital wage data to compute the IPF wage index since there was not an IPF-specific wage index available. We believe that IPFs generally compete in the same labor market as IPPS hospitals so the pre-floor, pre-reclassified IPPS hospital wage data should be reflective of labor costs of IPFs. We believe this pre-floor, pre-reclassified IPPS hospital wage index to be the best available data to use as proxy for an IPF specific wage index. As discussed in the rate year (RY) 2007 IPF PPS final rule (71 FR 27061 through 27067), under the IPF PPS, the wage index is calculated using the IPPS wage index for the labor market area in which the IPF is located, without taking into account geographic reclassifications, floors, and other adjustments made to the wage index under the IPPS. For a complete description of these IPPS wage index adjustments, we refer readers to the FY 2019 IPPS/LTCH PPS final rule (83 FR 41362 through 41390). Our wage index policy was put into regulation at 42 CFR 412.424(a)(2), and requires us to use the best Medicare data available to estimate costs per day, including an appropriate wage index to adjust for wage differences.

When the IPF PPS was implemented in the November 15, 2004 IPF PPS final rule, with an effective date of January 1, 2005, the pre-floor, pre-reclassified IPPS hospital wage index that was available at the time was the FY 2005 pre-floor, pre-reclassified IPPS hospital wage index. Historically, the IPF wage index for a given RY has used the pre-floor, pre-reclassified IPPS hospital wage index from the prior fiscal year as its basis. This has been due in part to the pre-floor, pre-reclassified IPPS hospital wage index data that were available during the IPF rulemaking cycle, where an annual IPF notice or IPF final rule was usually published in early May. This publication timeframe was relatively early compared to other

Medicare payment rules because the IPF PPS follows an RY, which was defined in the implementation of the IPF PPS as the 12-month period from July 1 to June 30 (69 FR 66927). Therefore the best available data at the time the IPF PPS was implemented was the pre-floor, pre-reclassified IPPS hospital wage index from the prior fiscal year (for example, the RY 2006 IPF wage index was based on the FY 2005 pre-floor, pre-reclassified IPPS hospital wage index).

In the RY 2012 IPF PPS final rule, we changed the reporting year timeframe for IPFs from a RY to the FY, which begins October 1 and ends September 30 (76 FR 26434 through 26435). In that FY 2012 IPF PPS final rule, we continued our established policy of using the pre-floor, pre-reclassified IPPS hospital wage index from the prior year (that is, from FY 2011) as the basis for the FY 2012 IPF wage index. This policy of basing a wage index on the prior year's pre-floor, pre-reclassified IPPS hospital wage index has been followed by other Medicare payment systems, such as hospice and inpatient rehabilitation facilities. By continuing with our established policy, we remained consistent with other Medicare payment systems.

We are proposing to change the IPF wage index methodology to align the IPF PPS wage index with the same wage data timeframe used by the IPPS for FY 2020 and subsequent years. Specifically, we are proposing to use the pre-floor, pre-reclassified IPPS hospital wage index from the fiscal year concurrent with the IPF fiscal year as the basis for the IPF wage index. For example, under this proposal, the FY 2020 IPF wage index would be based on the FY 2020 pre-floor, pre-reclassified IPPS hospital wage index rather than on the FY 2019 pre-floor, pre-reclassified IPPS hospital wage index.

Using the concurrent pre-floor, pre-reclassified IPPS hospital wage index would result in the most up-to-date wage data being the basis for the IPF wage index. It would also result in more consistency and parity in the wage index methodology used by other Medicare payment systems. The Medicare SNF PPS already uses the concurrent IPPS hospital wage index data as the basis for the SNF PPS wage index. Thus, if our proposal is finalized, the wage adjusted Medicare payments of various provider types would be based upon wage index data from the same timeframe. CMS is considering similar policies to use the concurrent pre-floor, pre-reclassified IPPS hospital wage index data in other Medicare payment systems, such as hospice and inpatient rehabilitation facilities.

If finalized, this proposed change to the IPF wage index methodology would be implemented in a budget-neutral fashion, so that total IPF payments would not be affected. However, there would be distributional effects, as shown in Table 15. Table 15 compares the estimated payments calculated using the FY 2020 IPF wage index based on the IPPS hospital wage index data from the prior fiscal year (the current methodology) with the estimated payments calculated using the proposed FY 2020 IPF wage index based on concurrent IPPS hospital wage index data (the proposed change in methodology). Due to budget neutrality, the effect on total estimated FY 2020 IPF payments is zero. Table 15 shows that urban IPFs are estimated to experience a smaller increase in payments if we were to implement the proposed methodology (0.01 percent increase) compared to if we were to maintain the current methodology (0.08 percent increase). Rural IPFs are estimated to have a smaller decrease in estimated payments if the proposed methodology were implemented (0.05 percent decrease) compared to if we were to maintain the current methodology (0.52 percent decrease).

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Table 15. Distributional Effects of the Proposed Changes to the IPF Wage Index Methodology

[Percent Change in columns 3 & 4]

Facility by Type	Number of Facilities	Estimated Impact of Wage Index Update Under Current Methodology	Estimated Impact of Wage Index Update Under Proposed Methodology
(1)	(2)	(3)	(4)
All Facilities	1,593	0.00	0.00
Total Urban	1,269	0.08	0.01
Urban unit	792	0.04	-0.07
Urban hospital	477	0.13	0.12
Total Rural	324	-0.52	-0.05
Rural unit	258	-0.60	-0.07
Rural hospital	66	-0.33	-0.02
By Type of Ownership:			
Freestanding IPFs			
Urban Psychiatric Hospitals			
Government	121	-0.21	-0.11
Non-Profit	100	0.17	-0.11
For-Profit	256	0.17	0.23
Rural Psychiatric Hospitals			
Government	32	-0.62	-0.28
Non-Profit	15	-0.26	-0.38
For-Profit	19	-0.21	0.22
IPF Units			
Urban			
Government	117	0.28	0.13
Non-Profit	510	-0.01	-0.05

For-Profit	165	0.02	-0.26
Rural			
Government	69	-0.54	0.04
Non-Profit	136	-0.45	0.04
For-Profit	53	-0.98	-0.46
By Teaching Status:			
Non-teaching	1,403	-0.04	-0.03
Less than 10% interns and residents to beds	108	0.09	0.10
10% to 30% interns and residents to beds	60	0.35	0.26
More than 30% interns and residents to beds	22	0.15	0.76
By Region:			
New England	105	-0.27	-0.73
Mid-Atlantic	230	0.18	0.01
South Atlantic	243	-0.11	-0.15
East North Central	269	-0.30	-0.21
East South Central	161	-0.62	-0.59
West North Central	117	-0.12	0.50
West South Central	236	-0.05	0.11
Mountain	105	-0.89	-0.57
Pacific	127	1.48	1.43
By Bed Size:			
Psychiatric Hospitals			
Beds: 0-24	86	0.01	0.01
Beds: 25-49	90	-0.10	-0.28
Beds: 50-75	87	-0.14	0.13
Beds: 76 +	280	0.21	0.21
Psychiatric Units			
Beds: 0-24	605	-0.25	-0.12
Beds: 25-49	271	0.02	-0.15
Beds: 50-75	108	0.21	0.15
Beds: 76 +	66	0.02	-0.02

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To provide additional information to IPFs about the effect of this proposed change in the IPF wage index methodology on estimated payments, we have also posted a provider-level table of effects (Addendum C) on the CMS website, available at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/WageIndex.html.*

We invite comments on this proposal to align the IPF wage index data timeframes with that of the IPPS, by using the concurrent pre-floor, pre-reclassified IPPS hospital wage index as the basis for the IPF wage index for FY 2020 and subsequent years.

For FY 2020, we propose to use the FY 2020 pre-floor, pre-reclassified IPPS hospital wage index as the basis for the IPF wage index; this pre-floor, pre-reclassified IPPS hospital wage index is the most appropriate wage index as it best reflects the variation in local labor costs of IPFs in the various geographic areas using the most recent IPPS

hospital wage data (data from hospital cost reports for the cost reporting period beginning during FY 2016) without any geographic reclassifications, floors, or other adjustments. We would apply the FY 2020 IPF wage index to payments beginning October 1, 2019.

We would apply the IPF wage index adjustment to the labor-related portion of the national base rate or ECT payment per treatment. The labor-related share of the national rate and ECT payment per treatment would change from 74.8 percent in FY 2019 to 76.8 percent in FY 2020. This percentage reflects the labor-related share of the proposed 2016-based IPF market basket for FY 2020 (see section III.A.6 of this rule).

c. Office of Management and Budget Bulletins

OMB publishes bulletins regarding CBSA changes, including changes to CBSA numbers and titles. In the RY 2007 IPF PPS final rule (71 FR 27061 through 27067), we adopted the changes discussed in the OMB Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for MSAs, and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In adopting the OMB CBSA geographic designations in RY 2007, we did not provide a separate transition for the CBSA-based wage index since the IPF PPS was already in a transition period from TEFRA payments to PPS payments.

In the RY 2009 IPF PPS notice, we incorporated the CBSA nomenclature changes published in the most recent OMB bulletin that applied to the IPPS hospital wage index used to determine the current IPF wage index and stated that we expected to continue to do the same for all the OMB CBSA nomenclature changes in future IPF PPS rules and notices, as necessary (73 FR 25721). The OMB bulletins may be accessed online at *https://www.whitehouse.gov/omb/bulletins/.*

In accordance with our established methodology, we have historically adopted any CBSA changes that are published in the OMB bulletin that corresponds with the IPPS hospital wage index used to determine the IPF wage index. For the FY 2015 IPF wage index, we used the FY 2014 pre-floor, pre-reclassified IPPS hospital wage index to adjust the IPF PPS payments. On February 28, 2013, OMB issued OMB Bulletin No. 13–01, which established revised delineations for MSAs, Micropolitan Statistical Areas, and Combined Statistical Areas in the United States and Puerto Rico based on the 2000 Census, and provided guidance on the use of the delineations of these statistical areas. A copy of this bulletin may be obtained at *https://www.whitehouse.gov/omb/bulletins/.*

Because the FY 2014 pre-floor, pre-reclassified IPPS hospital wage index did not reflect the statistical area revisions set forth in OMB Bulletin 13–01, the FY 2015 IPF PPS wage index, which was based on the FY 2014 pre-floor, pre-reclassified IPPS hospital wage index, did not reflect OMB's new area delineations based on the 2010 Census. According to OMB, ''[t]his bulletin provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010, in the **Federal Register** (75 FR 37246 through 37252) and Census Bureau data.'' These OMB Bulletin changes are reflected in the FY 2015 pre-floor, pre-reclassified IPPS hospital wage index, upon which the FY 2016 IPF wage index was based. We adopted these new OMB CBSA delineations in the FY 2016 IPF wage index and subsequent IPF wage indexes.

Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. However, OMB occasionally issues minor updates and revisions to statistical areas in the years between the decennial censuses. On July 15, 2015, OMB issued OMB Bulletin No. 15–01, which provided minor updates to, and superseded, OMB Bulletin No. 13–01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15–01 provides detailed information on the update to statistical areas since February 28, 2013. The updates provided in the attachment to OMB Bulletin No. 15–01 are based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012 and July 1, 2013. The complete list of statistical areas incorporating these changes is provided in OMB Bulletin No. 15–01. A copy of this bulletin may be obtained at *https://www.whitehouse.gov/omb/bulletins/.*

OMB Bulletin No. 15–01 establishes revised delineations for the Nation's Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas. The bulletin also provides delineations of Metropolitan Divisions as well as delineations of New England City and Town Areas.

In accordance with our longstanding policy, the IPF PPS continues to use the latest labor market area delineations available as soon as is reasonably possible to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. As discussed in the FY 2017 IPPS/LTCH PPS final rule (81 FR 56913), the updated labor market area definitions from OMB Bulletin 15–01 were implemented under the IPPS beginning on October 1, 2016 (FY 2017). Therefore, we implemented these revisions for the IPF PPS beginning October 1, 2017 (FY 2018), consistent with our historical practice of modeling IPF PPS adoption of the labor market area delineations after IPPS adoption of these delineations (historically the IPF wage index has been based upon the pre-floor, pre-reclassified IPPS hospital wage index from the prior year).

On August 15, 2017, OMB announced in OMB Bulletin No. 17–01 that one Micropolitan Statistical Area now qualifies as a Metropolitan Statistical Area . The new urban CBSA is as follows:

- Twin Falls, Idaho (CBSA 46300).

This CBSA is comprised of the principal city of Twin Falls, Idaho in Jerome County, Idaho and Twin Falls County, Idaho. Prior to this redesignation, Jerome County and Twin Falls County, Idaho were classified as rural. The OMB bulletin is available on the OMB website at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/bulletins/2017/b-17-01.pdf.*

With the change made by OMB Bulletin No. 17–01, these two counties are now designated as urban, and any IPFs in those areas would change their status from being rural to being urban. We are proposing to adopt these new OMB designations in FY 2020 as they would be included in the FY 2020 pre-floor, pre-reclassified IPPS hospital wage index upon which the FY 2020 IPF wage index is proposed to be based. That is, the FY 2020 pre-floor, pre-reclassified IPPS hospital wage index, which is the basis of the proposed FY 2020 IPF wage index, would include this new OMB designation.

Therefore, the 17 percent IPF rural adjustment would cease for IPF providers in these two counties. Currently, there is a single IPF in new CBSA 46300, which would lose its 17 percent rural adjustment as a result of being re-designated as urban. However, the FY 2020 pre-floor, pre-reclassified hospital IPPS wage index value for CBSA 46300 is 0.8252, which is 3.5 percent higher than the rural wage index value for Idaho (0.7971). As such, the loss of the 17 percent IPF wage index adjustment would be mitigated in

part by the increase in the wage index value when changing from the rural Idaho wage index value to the urban CBSA 46300 wage index value. Given that the loss of the rural adjustment would be mitigated in part by the increase in wage index value, and that only a single IPF is affected by this change, we do not believe it is necessary to transition this provider from its rural to newly urban status.

Thus, we propose to adopt this new OMB designation in the proposed IPF wage index for FY 2020 and for subsequent fiscal years. The FY 2020 IPF wage index already includes the OMB delineations that were adopted in prior fiscal years. The proposed FY 2020 IPF wage index (including the CBSA update from OMB Bulletin No. 17–01) is located on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/WageIndex.html.*

d. Solicitation of Public Comments on the IPF Wage Index

Historically, we have calculated the IPF PPS wage index values using unadjusted wage index values from another provider setting. Stakeholders have frequently commented on certain aspects of the IPF PPS wage index values and their impact on payments. We are soliciting comments on concerns stakeholders may have regarding the wage index used to adjust IPF PPS payments and suggestions for possible updates and improvements to the geographic adjustment of IPF PPS payments.

e. Proposed Adjustment for Rural Location

In the November 2004 IPF PPS final rule, we provided a 17 percent payment adjustment for IPFs located in a rural area. This adjustment was based on the regression analysis, which indicated that the per diem cost of rural facilities was 17 percent higher than that of urban facilities after accounting for the influence of the other variables included in the regression. This 17 percent adjustment has been part of the IPF PPS each year since the inception of the IPF PPS. For FY 2020, we are proposing to continue to apply a 17 percent payment adjustment for IPFs located in a rural area as defined at § 412.64(b)(1)(ii)(C). A complete discussion of the adjustment for rural locations appears in the November 2004 IPF PPS final rule (69 FR 66954).

f. Proposed Budget Neutrality Adjustment

Changes to the wage index are made in a budget-neutral manner so that updates do not increase expenditures. Therefore, for FY 2020, we are proposing to continue to apply a budget-neutrality adjustment in accordance with our existing budget-neutrality policy. This policy requires us to update the wage index in such a way that total estimated payments to IPFs for FY 2020 are the same with or without the changes (that is, in a budget-neutral manner) by applying a budget neutrality factor to the IPF PPS rates. We use the following steps to ensure that the rates reflect the update to the wage indexes (based on the FY 2016 hospital cost report data) and the labor-related share in a budget-neutral manner:

Step 1. Simulate estimated IPF PPS payments, using the FY 2019 IPF wage index values (available on the CMS website) and labor-related share (as published in the FY 2019 IPF PPS final rule (83 FR 38579)).

Step 2. Simulate estimated IPF PPS payments using the proposed FY 2020 IPF wage index values (available on the CMS website) and proposed FY 2020 labor-related share (based on the latest available data as discussed previously).

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2. The resulting quotient is the FY 2020 budget-neutral wage adjustment factor of 1.0078.

Step 4. Apply the FY 2020 budget-neutral wage adjustment factor from step 3 to the FY 2019 IPF PPS federal per diem base rate after the application of the market basket update described in section III.A.4 of this rule, to determine the FY 2020 IPF PPS federal per diem base rate.

2. Proposed Teaching Adjustment

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(1)(iii) to establish a facility-level adjustment for IPFs that are, or are part of teaching hospitals. The teaching adjustment accounts for the higher indirect operating costs experienced by hospitals that participate in graduate medical education (GME) programs. The payment adjustments are made based on the ratio of the number of full-time equivalent (FTE) interns and residents training in the IPF and the IPF's average daily census (ADC).

Medicare makes direct GME payments (for direct costs such as resident and teaching physician salaries, and other direct teaching costs) to all teaching hospitals including those paid under a PPS, and those paid under the TEFRA rate-of-increase limits. These direct GME payments are made separately from payments for hospital operating costs and are not part of the IPF PPS. The direct GME payments do not address the estimated higher indirect operating costs teaching hospitals may face.

The results of the regression analysis of FY 2002 IPF data established the basis for the payment adjustments included in the November 2004 IPF PPS final rule. The results showed that the indirect teaching cost variable is significant in explaining the higher costs of IPFs that have teaching programs. We calculated the teaching adjustment based on the IPF's ''teaching variable,'' which is (1 + (the number of FTE residents training in the IPF/the IPF's ADC)). The teaching variable is then raised to 0.5150 power to result in the teaching adjustment. This formula is subject to the limitations on the number of FTE residents, which are described later in this section of this rule.

We established the teaching adjustment in a manner that limited the incentives for IPFs to add FTE residents for the purpose of increasing their teaching adjustment. We imposed a cap on the number of FTE residents that may be counted for purposes of calculating the teaching adjustment. The cap limits the number of FTE residents that teaching IPFs may count for the purpose of calculating the IPF PPS teaching adjustment, not the number of residents teaching institutions can hire or train. We calculated the number of FTE residents that trained in the IPF during a ''base year'' and used that FTE resident number as the cap. An IPF's FTE resident cap is ultimately determined based on the final settlement of the IPF's most recent cost report filed before November 15, 2004 (publication date of the IPF PPS final rule). A complete discussion of the temporary adjustment to the FTE cap to reflect residents added due to hospital closure and by residency program appears in the RY 2012 IPF PPS proposed rule (76 FR 5018 through 5020) and the RY 2012 IPF PPS final rule (76 FR 26453 through 26456).

In the regression analysis, the logarithm of the teaching variable had a coefficient value of 0.5150. We converted this cost effect to a teaching payment adjustment by treating the regression coefficient as an exponent and raising the teaching variable to a power equal to the coefficient value. We note that the coefficient value of 0.5150 was based on the regression analysis holding all other components of the payment system constant. A complete discussion of how the teaching adjustment was calculated appears in the November 2004 IPF PPS final rule (69 FR 66954 through 66957) and the RY 2009 IPF PPS notice (73 FR 25721). As with other adjustment factors

derived through the regression analysis, we do not plan to rerun the teaching adjustment factors in the regression analysis until we more fully analyze IPF PPS data as part of the IPF PPS refinement we discuss in section IV of this rule. Therefore, in this FY 2020 proposed rule, we are proposing to continue to retain the coefficient value of 0.5150 for the teaching adjustment to the federal per diem base rate.

3. Proposed Cost of Living Adjustment for IPFs Located in Alaska and Hawaii

The IPF PPS includes a payment adjustment for IPFs located in Alaska and Hawaii based upon the area in which the IPF is located. As we explained in the November 2004 IPF PPS final rule, the FY 2002 data demonstrated that IPFs in Alaska and Hawaii had per diem costs that were disproportionately higher than other IPFs. Other Medicare prospective payment systems (for example: The IPPS and LTCH PPS) adopted a COLA to account for the cost differential of care furnished in Alaska and Hawaii.

We analyzed the effect of applying a COLA to payments for IPFs located in Alaska and Hawaii. The results of our analysis demonstrated that a COLA for IPFs located in Alaska and Hawaii would improve payment equity for these facilities. As a result of this analysis, we provided a COLA in the November 2004 IPF PPS final rule.

A COLA for IPFs located in Alaska and Hawaii is made by multiplying the non-labor-related portion of the federal per diem base rate by the applicable COLA factor based on the COLA area in which the IPF is located.

The COLA factors through 2009 are published on the Office of Personnel Management (OPM) website (*https://www.opm.gov/oca/cola/rates.asp*).

We note that the COLA areas for Alaska are not defined by county as are the COLA areas for Hawaii. In 5 CFR 591.207, the OPM established the following COLA areas:

- City of Anchorage, and 80-kilometer (50-mile) radius by road, as measured from the federal courthouse.
- City of Fairbanks, and 80-kilometer (50-mile) radius by road, as measured from the federal courthouse.
- City of Juneau, and 80-kilometer (50-mile) radius by road, as measured from the federal courthouse.
- Rest of the State of Alaska.

As stated in the November 2004 IPF PPS final rule, we update the COLA factors according to updates established by the OPM. However, sections 1911 through 1919 of the Nonforeign Area Retirement Equity Assurance Act, as contained in subtitle B of title XIX of the National Defense Authorization Act (NDAA) for FY 2010 (Pub. L. 111–84, October 28, 2009), transitions the Alaska and Hawaii COLAs to locality pay. Under section 1914 of NDAA, locality pay was phased in over a 3-year period beginning in January 2010, with COLA rates frozen as of the date of enactment, October 28, 2009, and then proportionately reduced to reflect the phase-in of locality pay.

When we published the proposed COLA factors in the RY 2012 IPF PPS proposed rule (76 FR 4998), we inadvertently selected the FY 2010 COLA rates, which had been reduced to account for the phase-in of locality pay. We did not intend to propose the reduced COLA rates because that would have understated the adjustment. Since the 2009 COLA rates did not reflect the phase-in of locality pay, we finalized the FY 2009 COLA rates for RY 2010 through RY 2014.

In the FY 2013 IPPS/LTCH final rule (77 FR 53700 through 53701), we established a new methodology to update the COLA factors for Alaska and Hawaii, and adopted this methodology for the IPF PPS in the FY 2015 IPF final rule (79 FR 45958 through 45960). We adopted this new COLA methodology for the IPF PPS because IPFs are hospitals with a similar mix of commodities and services. We think it is appropriate to have a consistent policy approach with that of other hospitals in Alaska and Hawaii. Therefore, the IPF COLAs for FY 2015 through FY 2017 were the same as those applied under the IPPS in those years. As finalized in the FY 2013 IPPS/LTCH PPS final rule (77 FR 53700 and 53701), the COLA updates are determined every 4 years, when the IPPS market basket labor-related share is updated during rebasing. Because the labor-related share of the IPPS market basket was updated for FY 2018, the COLA factors were updated in FY 2018 IPPS/LTCH rulemaking (82 FR 38529). As such, we also updated the IPF PPS COLA factors for FY 2018 (82 FR 36780 through 36782) to reflect the updated COLA factors finalized in the FY 2018 IPPS/LTCH rulemaking. We propose to continue to apply the same COLA factors in FY 2020 that were used in FY 2018 and FY 2019.

TABLE 16—COMPARISON OF IPF PPS COST-OF-LIVING ADJUSTMENT FACTORS: IPFS LOCATED IN ALASKA AND HAWAII

Area	FY 2015 through FY 2017	FY 2018 through FY 2020
Alaska:		
City of Anchorage and 80-kilometer (50-mile) radius by road	1.23	1.25
City of Fairbanks and 80-kilometer (50-mile) radius by road	1.23	1.25
City of Juneau and 80-kilometer (50-mile) radius by road	1.23	1.25
Rest of Alaska	1.25	1.25
Hawaii:		
City and County of Honolulu	1.25	1.25
County of Hawaii	1.19	1.21
County of Kauai	1.25	1.25
County of Maui and County of Kalawao	1.25	1.25

The proposed IPF PPS COLA factors for FY 2020 are also shown in Addendum A to this proposed rule, available at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html*.

4. Proposed Adjustment for IPFs With a Qualifying Emergency Department (ED)

The IPF PPS includes a facility-level adjustment for IPFs with qualifying EDs. We provide an adjustment to the federal per diem base rate to account for the costs associated with maintaining a full-service ED. The adjustment is intended to account for ED costs incurred by a psychiatric hospital with a qualifying ED or an excluded psychiatric unit of an IPPS hospital or a CAH, for preadmission services otherwise payable under the Medicare Hospital Outpatient Prospective Payment System

(OPPS), furnished to a beneficiary on the date of the beneficiary's admission to the hospital and during the day immediately preceding the date of admission to the IPF (see § 413.40(c)(2)), and the overhead cost of maintaining the ED. This payment is a facility-level adjustment that applies to all IPF admissions (with one exception which we described), regardless of whether a particular patient receives preadmission services in the hospital's ED.

The ED adjustment is incorporated into the variable per diem adjustment for the first day of each stay for IPFs with a qualifying ED. Those IPFs with a qualifying ED receive an adjustment factor of 1.31 as the variable per diem adjustment for day 1 of each patient stay. If an IPF does not have a qualifying ED, it receives an adjustment factor of 1.19 as the variable per diem adjustment for day 1 of each patient stay.

The ED adjustment is made on every qualifying claim except as described in this section of the proposed rule. As specified in § 412.424(d)(1)(v)(B), the ED adjustment is not made when a patient is discharged from an IPPS hospital or CAH and admitted to the same IPPS hospital's or CAH's excluded psychiatric unit. We clarified in the November 2004 IPF PPS final rule (69 FR 66960) that an ED adjustment is not made in this case because the costs associated with ED services are reflected in the DRG payment to the IPPS hospital or through the reasonable cost payment made to the CAH.

Therefore, when patients are discharged from an IPPS hospital or CAH and admitted to the same hospital's or CAH's excluded psychiatric unit, the IPF receives the 1.19 adjustment factor as the variable per diem adjustment for the first day of the patient's stay in the IPF. For FY 2020, we propose to continue to retain the 1.31 adjustment factor for IPFs with qualifying EDs. A complete discussion of the steps involved in the calculation of the ED adjustment factor in our November 2004 IPF PPS final rule (69 FR 66959 through 66960) and the RY 2007 IPF PPS final rule (71 FR 27070 through 27072).

E. Other Proposed Payment Adjustments and Policies

1. Outlier Payment Overview

The IPF PPS includes an outlier adjustment to promote access to IPF care for those patients who require expensive care and to limit the financial risk of IPFs treating unusually costly patients. In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(3)(i) to provide a per-case payment for IPF stays that are extraordinarily costly. Providing additional payments to IPFs for extremely costly cases strongly improves the accuracy of the IPF PPS in determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be incurred in treating patients who require more costly care, and therefore, reduce the incentives for IPFs to under-serve these patients. We make outlier payments for discharges in which an IPF's estimated total cost for a case exceeds a fixed dollar loss threshold amount (multiplied by the IPF's facility-level adjustments) plus the federal per diem payment amount for the case.

In instances when the case qualifies for an outlier payment, we pay 80 percent of the difference between the estimated cost for the case and the adjusted threshold amount for days 1 through 9 of the stay (consistent with the median LOS for IPFs in FY 2002), and 60 percent of the difference for day 10 and thereafter. We established the 80 percent and 60 percent loss sharing ratios because we were concerned that a single ratio established at 80 percent (like other Medicare PPSs) might provide an incentive under the IPF per diem payment system to increase LOS in order to receive additional payments.

After establishing the loss sharing ratios, we determined the current fixed dollar loss threshold amount through payment simulations designed to compute a dollar loss beyond which payments are estimated to meet the 2 percent outlier spending target. Each year when we update the IPF PPS, we simulate payments using the latest available data to compute the fixed dollar loss threshold so that outlier payments represent 2 percent of total estimated IPF PPS payments.

2. Proposed Update to the Outlier Fixed Dollar Loss Threshold Amount

In accordance with the update methodology described in § 412.428(d), we are proposing to update the fixed dollar loss threshold amount used under the IPF PPS outlier policy. Based on the regression analysis and payment simulations used to develop the IPF PPS, we established a 2 percent outlier policy, which strikes an appropriate balance between protecting IPFs from extraordinarily costly cases while ensuring the adequacy of the federal per diem base rate for all other cases that are not outlier cases.

Based on an analysis of the latest available data (the December 2018 update of FY 2018 IPF claims) and rate increases, we believe it is necessary to update the fixed dollar loss threshold amount to maintain an outlier percentage that equals 2 percent of total estimated IPF PPS payments. We would update the IPF outlier threshold amount for FY 2020 using FY 2018 claims data and the same methodology that we used to set the initial outlier threshold amount in the RY 2007 IPF PPS final rule (71 FR 27072 and 27073), which is also the same methodology that we used to update the outlier threshold amounts for years 2008 through 2019. Based on an analysis of these updated data, we estimate that IPF outlier payments as a percentage of total estimated payments are approximately 2.15 percent in FY 2019. Therefore, we propose to update the outlier threshold amount to $14,590 to maintain estimated outlier payments at 2 percent of total estimated aggregate IPF payments for FY 2020. This proposed rule update is an increase from the FY 2019 threshold of $12,865.

3. Proposed Update to IPF Cost-to-Charge Ratio Ceilings

Under the IPF PPS, an outlier payment is made if an IPF's cost for a stay exceeds a fixed dollar loss threshold amount plus the IPF PPS amount. In order to establish an IPF's cost for a particular case, we multiply the IPF's reported charges on the discharge bill by its overall cost-to-charge ratio (CCR). This approach to determining an IPF's cost is consistent with the approach used under the IPPS and other PPSs. In the FY 2004 IPPS final rule (68 FR 34494), we implemented changes to the IPPS policy used to determine CCRs for IPPS hospitals, because we became aware that payment vulnerabilities resulted in inappropriate outlier payments. Under the IPPS, we established a statistical measure of accuracy for CCRs to ensure that aberrant CCR data did not result in inappropriate outlier payments.

As we indicated in the November 2004 IPF PPS final rule (69 FR 66961), we believe that the IPF outlier policy is susceptible to the same payment vulnerabilities as the IPPS; therefore, we adopted a method to ensure the statistical accuracy of CCRs under the IPF PPS. Specifically, we adopted the following procedure in the November 2004 IPF PPS final rule:

- Calculated two national ceilings, one for IPFs located in rural areas and one for IPFs located in urban areas.
- Computed the ceilings by first calculating the national average and the standard deviation of the CCR for both urban and rural IPFs using the most recent CCRs entered in the CY 2019 Provider Specific File.

For FY 2020, we propose to continue to follow this methodology.

To determine the rural and urban ceilings, we multiplied each of the standard deviations by 3 and added the result to the appropriate national CCR average (either rural or urban). The upper threshold CCR for IPFs in FY 2020 is 2.0588 for rural IPFs, and 1.7321 for urban IPFs, based on CBSA-based geographic designations. If an IPF's CCR is above the applicable ceiling, the ratio is considered statistically inaccurate, and we assign the appropriate national (either rural or urban) median CCR to the IPF.

We apply the national CCRs to the following situations:

- New IPFs that have not yet submitted their first Medicare cost report. We continue to use these national CCRs until the facility's actual CCR can be computed using the first tentatively or final settled cost report.
- IPFs whose overall CCR is in excess of three standard deviations above the corresponding national geometric mean (that is, above the ceiling).
- Other IPFs for which the Medicare Administrative Contractor (MAC) obtains inaccurate or incomplete data with which to calculate a CCR.

We propose to continue to update the FY 2020 national median and ceiling CCRs for urban and rural IPFs based on the CCRs entered in the latest available IPF PPS Provider Specific File. Specifically, for FY 2020, to be used in each of the three situations listed previously, using the most recent CCRs entered in the CY 2019 Provider Specific File, we provide an estimated national median CCR of 0.5810 for rural IPFs and a national median CCR of 0.4330 for urban IPFs. These calculations are based on the IPF's location (either urban or rural) using the CBSA-based geographic designations. A complete discussion regarding the national median CCRs appears in the November 2004 IPF PPS final rule (69 FR 66961 through 66964).

IV. Update on IPF PPS Refinements

For RY 2012, we identified several areas of concern for future refinement, and we invited comments on these issues in the RY 2012 IPF PPS proposed and final rules. For further discussion of these issues and to review the public comments, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and final rule (76 FR 26432).

We have delayed making refinements to the IPF PPS until we have completed a thorough analysis of IPF PPS data on which to base those refinements. Specifically, we will delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. We have begun and will continue the necessary analysis to better understand IPF industry practices so that we may refine the IPF PPS in the future, as appropriate. Our preliminary analysis has also revealed variation in cost and claim data, particularly related to labor costs, drugs costs, and laboratory services. Some providers have very low labor costs, or very low or missing drug or laboratory costs or charges, relative to other providers. As we noted in the FY 2016 IPF PPS final rule (80 FR 46693 through 46694), our preliminary analysis of 2012 to 2013 IPF data found that over 20 percent of IPF stays reported no ancillary costs, such as laboratory and drug costs, in their cost reports, or laboratory or drug charges on their claims. Because we expect that most patients requiring hospitalization for active psychiatric treatment will need drugs and laboratory services, we again remind providers that the IPF PPS federal per diem base rate includes the cost of all ancillary services, including drugs and laboratory services.

On November 17, 2017, we issued Transmittal 12, which made changes to the hospital cost report form CMS–2552–10 (OMB No. 0938–0050), and included the requirement that cost reports from psychiatric hospitals include certain ancillary costs, or the cost report will be rejected. On January 30, 2018, we issued Transmittal 13, which changed the implementation date for Transmittal 12 to be for cost reporting periods ending on or after September 30, 2017. For details, we refer readers to see these Transmittals, which are available on the CMS website at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/index.html*. CMS suspended the requirement that cost reports from psychiatric hospitals include certain ancillary costs effective April 27, 2018, in order to consider excluding all-inclusive rate providers from this requirement. CMS issued Transmittal 15 on October 19, 2018, reinstating the requirement that cost reports from psychiatric hospitals, except all-inclusive rate providers, include certain ancillary costs.

We only pay the IPF for services furnished to a Medicare beneficiary who is an inpatient of that IPF (except for certain professional services), and payments are considered to be payments in full for all inpatient hospital services provided directly or under arrangement (see 42 CFR 412.404(d)), as specified in 42 CFR 409.10.

We will continue to analyze data from claims and cost reports that do not include ancillary charges or costs, and will be sharing our findings with CMS Office of the Center for Program Integrity and CMS Office of Financial Management for further investigation, as the results warrant. Our refinement analysis is dependent on recent precise data for costs, including ancillary costs. We will continue to collect these data and analyze them for both timeliness and accuracy with the expectation that these data will be used in a future refinement. It is currently our intent to explore refinements to the adjustments in future rulemaking. Since we are not proposing refinements in this proposed rule, for FY 2020 we will continue to use the existing adjustment factors.

V. Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program

A. Background and Statutory Authority

We refer readers to the FY 2019 IPF PPS final rule (83 FR 38589) for a discussion of the background and statutory authority [2] of the IPFQR Program.

B. Covered Entities

In the FY 2013 IPPS/LTCPPS final rule (77 FR 53645), we established that the IPFQR Program's quality reporting requirements cover those psychiatric hospitals and psychiatric units paid under Medicare's IPF PPS (§ 412.404(b)). Generally, psychiatric hospitals and psychiatric units within acute care and critical access hospitals that treat Medicare patients are paid under the IPF PPS. Consistent with previous regulations, we continue to use the term IPF to refer to both inpatient psychiatric hospitals and psychiatric

[2] We note that the statute uses the term ''rate year'' (RY). However, beginning with the annual update of the inpatient psychiatric facility prospective payment system (IPF PPS) that took effect on July 1, 2011 (RY 2012), we aligned the IPF PPS update with the annual update of the ICD codes, effective on October 1 of each year. This change allowed for annual payment updates and the ICD coding update to occur on the same schedule and appear in the same **Federal Register** document, promoting administrative efficiency. To reflect the change to the annual payment rate update cycle, we revised the regulations at 42 CFR 412.402 to specify that, beginning October 1, 2012, the RY update period would be the 12-month period from October 1 through September 30, which we refer to as a ''fiscal year'' (FY) (76 FR 26435). Therefore, with respect to the IPFQR Program, the terms ''rate year,'' as used in the statute, and ''fiscal year'' as used in the regulation, both refer to the period from October 1 through September 30. For more information regarding this terminology change, we refer readers to section III. of the RY 2012 IPF PPS final rule (76 FR 26434 through 26435).

units. This usage follows the terminology in our IPF PPS regulations at § 412.402. For more information on covered entities, we refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53645).

C. Previously Finalized Measures and Administrative Procedures

The current IPFQR Program includes 13 measures. For more information on these measures, we refer readers to the following final rules:

- The FY 2013 IPPS/LTCH PPS final rule (77 FR 53646 through 53652);
- The FY 2014 IPPS/LTCH PPS final rule (78 FR 50889 through 50897);
- The FY 2015 IPF PPS final rule (79 FR 45963 through 45975);
- The FY 2016 IPF PPS final rule (80 FR 46695 through 46714);
- The FY 2017 IPPS/LTCH PPS final rule (81 FR 57238 through 57247); and
- The FY 2019 IPF PPS final rule (83 FR 38590 through 38606).

For more information on previously adopted procedural requirements, we refer readers to the following rules:

- The FY 2013 IPPS/LTCH PPS final rule (77 FR 53653 through 53660);
- The FY 2014 IPPS/LTCH PPS final rule (78 FR 50897 through 50903;
- The FY 2015 IPF PPS final rule (79 FR 45975 through 45978);
- The FY 2016 IPF PPS final rule (80 FR 46715 through 46719);
- The FY 2017 IPPS/LTCH PPS final rule (81 FR 57248 through 57249);
- The FY 2018 IPPS/LTCH PPS final rule (82 FR 38471 through 38474); and
- The FY 2019 IPF PPS final rule (83 FR 38606 through 38608).

D. IPFQR Program Measures

1. Measure Selection Process

Before being proposed for inclusion in the IPFQR Program, measures are placed on a list of measures under consideration (MUC), which is published annually by December 1 on behalf of CMS by the NQF. Following publication on the MUC list, the Measure Applications Partnership (MAP), a multi-stakeholder group convened by the NQF, reviews the measures under consideration for the IPFQR Program, among other Federal programs, and provides input on those measures to the Secretary. We considered the input and recommendations provided by the MAP in selecting all measures for the IPFQR Program. Further details concerning the input and recommendations from the MAP for the measure proposed in this rule (Medication Continuation Following Inpatient Psychiatric Discharge, NQF #3205) are provided in Section V.D.3.

2. Removal or Retention of IPFQR Program Measures

a. Background

In the FY 2018 IPPS/LTCH PPS final rule (82 FR 38463 through 38465), we finalized our proposals to adopt considerations for removing or retaining measures within the IPFQR Program and criteria for determining when a measure is ''topped out.'' In the FY 2019 IPF PPS final rule (83 FR 38591 through 38593), we added one additional measure removal factor. We are not proposing any changes to these removal factors, topped-out criteria, or retention factors and refer readers to the FY 2018 IPPS/LTCH PPS final rule (82 FR 38463 through 38465) and the FY 2019 IPF PPS final rule (83 FR 38591 through 38593) for more information. We will continue to retain measures from each previous year's IPFQR Program measure set for subsequent years' measure sets, except when we specifically propose to remove or replace a measure. We will continue to use the notice-and-comment rulemaking process to propose measures for removal or replacement, as we described upon adopting these factors in the 2018 IPPS/LTCH PPS final rule (82 FR 38464 through 38465).

b. Application of Considerations for Removal and Retention to Current Measure Set

In the FY 2018 IPPS/LTCH PPS final rule, we noted that several commenters requested that we evaluate the current measures in the IPFQR Program using the removal and retention factors that we finalized in that rule (82 FR 38464). Following this evaluation, we proposed to remove eight measures from the IPFQR Program in the FY 2019 IPF PPS proposed rule (83 FR 21118 through 21123) for the FY 2020 program year and subsequent years. In the FY 2019 IPF PPS final rule (83 FR 38593 through 38604) we finalized removal of five of these measures. In our evaluation of the IPFQR Program measure set subsequent to publication of the FY 2019 IPF PPS final rule, we have not identified additional measures to which our measure removal factors apply. Therefore, we are not proposing to remove any additional measures at this time.

The previously finalized number of measures for the FY 2021 payment determination and subsequent years totals 13.

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Table 17. Previously Finalized Measures for the FY 2020 Payment Determination and Subsequent Years

NQF #	Measure ID	Measure
0640	HBIPS-2	Hours of Physical Restraint Use
0641	HBIPS-3	Hours of Seclusion Use
0560	HBIPS-5	Patients Discharged on Multiple Antipsychotic Medications with Appropriate Justification
0576	FUH	Follow-up After Hospitalization for Mental Illness
N/A*	SUB-2 and SUB-2a	Alcohol Use Brief Intervention Provided or Offered and SUB-2a Alcohol Use Brief Intervention
N/A*	SUB-3 and SUB-3a	Alcohol and Other Drug Use Disorder Treatment Provided or Offered at Discharge and SUB-3a Alcohol and Other Drug Use Disorder Treatment at Discharge
N/A*	TOB-2 and TOB-2a	Tobacco Use Treatment Provided or Offered and TOB-2a Tobacco Use Treatment
N/A*	TOB-3 and TOB-3a	Tobacco Use Treatment Provided or Offered at Discharge and Tobacco Use Treatment at Discharge
1659	IMM-2	Influenza Immunization
N/A*	N/A	Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care)
N/A*	N/A	Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care)
N/A	N/A	Screening for Metabolic Disorders
2860	N/A	Thirty-Day All-Cause Unplanned Readmission Following Psychiatric Hospitalization in an Inpatient Psychiatric Facility

* Measure is no longer endorsed by the NQF but was endorsed at time of adoption. Section 1886(s)(4)(D)(ii) of the Act authorizes the Secretary to specify a measure that is not endorsed by the NQF as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary. We attempted to find available measures for each of these clinical topics that have been endorsed or adopted by a consensus organization and found no other feasible and practical measures on the topics for the IPF setting.

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3. Proposed New Quality Measure for the FY 2021 Payment Determination and Subsequent Years—Medication Continuation Following Inpatient Psychiatric Discharge (NQF #3205)

a. Background

Medication continuation is important for patients discharged from the inpatient psychiatric setting with major depressive disorder (MDD), schizophrenia, or bipolar disorder because of significant negative outcomes associated with non-adherence to medication regimens. For example, patients with MDD who do not remain on prescribed medications are more likely to have negative health outcomes such as relapse and readmission, decreased quality of life, and increased healthcare costs.[3] [4] Patients with schizophrenia who do not adhere to their medication regimen are more likely to be hospitalized, use emergency psychiatric services, be arrested, be victims of crimes, and consume alcohol or drugs compared to those who adhere to their medication regimen.[5] Patients

[3] Geddes JR, Carney SM, Davies C, et al. Relapse prevention with antidepressant drug treatment in depressive disorders: a systematic review. Lancet. 2003;361(9358):653–661.

[4] Glue P, Donovan MR, Kolluri S, Emir B. Metaanalysis of relapse prevention antidepressant trials in depressive disorders. The Australian and New Zealand journal of psychiatry. 2010;44(8):697–705.

[5] Gilmer TP, Dolder CR, Lacro JP, et al. Adherence to treatment with antipsychotic medication and health care costs among Medicaid beneficiaries

with bipolar disorder who do not adhere to their medications have increased suicide risk.[6] For these reasons, guidelines from the American Psychiatric Association (APA) and the Department of Veterans Affairs/Department of Defense (VA/DoD), which are based on extensive literature, recommend pharmacotherapy as the primary form of treatment for patients with these conditions.[7] [8] [9] [10] [11]

Furthermore, we believe that there are factors external to the IPF that influence filling prescriptions post-discharge in the psychiatric population. While it may not be possible to achieve complete post-discharge compliance with pharmacotherapy, there is evidence that improvements to the quality of care provided by IPFs, including discharge processes, can help to increase medication continuation rates.[12] [13] [14] [15] [16] These interventions include patient education, enhanced therapeutic relationships, shared decision-making, and text-message reminders, with multidimensional approaches resulting in the best outcomes.

We proposed to adopt the Medication Continuation Following Inpatient Psychiatric Discharge measure (NQF #3205) for the FY 2020 payment determination and subsequent years in the FY 2018 IPPS/LTCH PPS proposed rule (82 FR 20122 through 20126) to address this important clinical topic. In the FY 2018 IPPS/LTCH PPS final rule (82 FR 38465 through 38470), we did not finalize adoption of the Medication Continuation Following Inpatient Psychiatric Discharge measure (NQF #3205), because we recognized that this measure may place undue burden on facilities that were updating processes to account for previously adopted measures despite being calculated from claims data, which should not require additional information collection burden. We did not want to place undue burden on facilities, especially small, rural facilities, and we wished to accommodate the need for facilities to develop and implement innovative efforts, such as updating their processes and clinical workflows, for this measure.

At that time, we stated that we would consider proposing this measure again in future rulemaking. We note that since the FY 2018 IPPS/LTCH PPS final rule, we have removed five measures from the IPFQR Program (83 FR 38593 through 38602), reducing burden on IPFs by approximately 546,000 hours and $20 million (83 FR38610 through 38611), and IPFs have had an additional 2 years to familiarize themselves with the remaining IPFQR Program measure set and to update processes and clinical workflows accordingly. Therefore, we believe that it is now appropriate to propose this measure for the IPFQR Program again.

Since the FY 2018 IPPS/LTCH PPS final rule, we have not made any changes to the Medication Continuation Following Inpatient Psychiatric Discharge (NQF #3205) measure's specifications. However, we have taken steps to improve upon the suitability of this measure for the IPFQR Program. First, we considered recommendations and comments received on the Medication Continuation Following Inpatient Psychiatric Discharge (NQF #3205) measure from the FY 2018 IPPS/LTCH PPS final rule (82 FR 38468 through 38470). We provide more detail about these comments below.

Second, since the FY 2018 IPPS/LTCH PPS final rule, we have provided additional information about this measure to the MAP and to the NQF, including reliability and validity testing. The measure was subsequently endorsed by NQF. We continue to believe that this measure evaluates a process with a demonstrated quality gap, because in testing this measure, we found that the range of performance between the 10th percentile and the 80th percentile facility performance was between 67 percent and 88 percent. We found that if all facilities had at least the median rate then 16,000 additional Medicare beneficiaries would fill prescriptions for an evidence-based medication to manage their condition following discharge.[17] Furthermore, we believe this measure has the potential to benefit patients by encouraging facilities to adopt interventions to improve post discharge medication continuation rates with no additional reporting burden to IPFs.

In response to our proposal in the FY 2018 IPPS/LTCH PPS proposed rule, many comments focused on the potential undue burden of the measure given the fact that many facilities were still updating processes to account for previously adopted measures (82 FR 38469). Between the FY 2018 IPPS/LTCH PPS final rule and this proposed rule, we have not adopted any new measures into the program. We believe that IPFs no longer need to update processes to account for previously adopted measures because they have had 2 years to complete all such updates. Therefore, we believe that there is less burden associated with the IPFQR program than when we proposed to adopt this measure in the FY 2018 IPPS/LTCH PPS proposed rule.

Some commenters also expressed concern that patients may experience barriers to filling prescriptions that are beyond the control of IPFs (82 FR 38469 through 38470). While we believe that there are factors external to an IPF that influence filling prescriptions after a patient is discharge, as the methodology report for the measure indicates,[18] IPFs can also undertake interventions to improve the likelihood of a patient's medication continuation post-discharge.

In response to comments that the affected population may be too small to report meaningful data because it is limited to Medicare patients enrolled in Parts A, B, and D (82 FR 38469 through

with schizophrenia. The American journal of psychiatry. 2004;161(4):692–699.

[6] Gonzalez-Pinto A, Mosquera F, Alonso M, et al. Suicidal risk in bipolar I disorder patients and adherence to long-term lithium treatment. Bipolar disorders. 2006;8(5 Pt 2):618–624.

[7] American Psychiatric Association. (2002). Practice guideline for the treatment of patients with bipolar disorder, second edition. Retrieved from: *http://psychiatryonline.org/pb/assets/raw/sitewide/practice_guidelines/guidelines/bipolar.pdf.*

[8] American Psychiatric Association. (2010).Practice guideline for the treatment of patients with major depressive disorder, 3rd ed. Retrieved from: *http://psychiatryonline.org/pb/assets/raw/sitewide/practice_guidelines/guidelines/mdd.pdf.*

[9] American Psychiatric Association. (2010). Practice guideline for the treatment of patients with schizophrenia: 2nd ed. Retrieved from: *http://psychiatryonline.org/pb/assets/raw/sitewide/practice_guidelines/guidelines/schizophrenia.pdf.*

[10] U.S. Department of Veterans Affairs, & U.S. Department of Defense. (2016). Management of major depressive disorder (MDD). Retrieved from: *http://www.healthquality.va.gov/guidelines/MH/mdd/VADoDMDDCPGFINAL82916.pdf.*

[11] U.S. Department of Veterans Affairs & U.S. Department of Defense. (2010) VA/DOD clinical practice guideline for management of bipolar disorder in adults. Retrieved from: *http://www.healthquality.va.gov/guidelines/MH/bd/bd_305_full.pdf.*

[12] Haddad PM, Brain C, Scott J. Nonadherence with antipsychotic medication in schizophrenia: challenges and management strategies. Patient related outcome measures. 2014;5:43–62.

[13] Hung CI. Factors predicting adherence to antidepressant treatment. Current opinion in psychiatry. 2014;27(5):344–349.

[14] Lanouette NM, Folsom DP, Sciolla A, Jeste DV. Psychotropic medication nonadherence among United States Latinos: a comprehensive literature review. Psychiatric services (Washington, DC). 2009;60(2):157–174.

[15] Mitchell AJ. Understanding Medication Discontinuation in Depression. BMedSci Psychiatric Times. 2007;24(4).

[16] Sylvia LG, Hay A, Ostacher MJ, et al. Association between therapeutic alliance, care satisfaction, and pharmacological adherence in bipolar disorder. Journal of clinical psychopharmacology. 2013;33(3):343–350.

[17] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HospitalQualityInits/Downloads/Version_1-0_Inpatient_Psychiatric_Facility_Medication_Continuation_Public.zip.*

[18] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HospitalQualityInits/Downloads/Version_1-0_Inpatient_Psychiatric_Facility_Medication_Continuation_Public.zip.*

38470), we note that the NQF found this measure to be valid and reliable [19] indicating that the size of the population is sufficient to report meaningful data. These commenters additionally expressed that because the measure is limited to Medicare patients enrolled in Parts A, B, and D, there may not be a performance gap because these patients do not experience the same access barriers as other inpatient psychiatric populations. However, we note that in their endorsement review of the measure, the NQF found that there was evidence of a performance gap in the quality area that was addressed by the measure even though the measure is limited to patients enrolled in Medicare A, B, and D.[20]

Finally, in response to comments that the measure had not completed full endorsement review by NQF (82 FR 38469), the measure is now fully endorsed by the NQF as discussed in more detail in section b of this rule. Further, in its review of the measure for endorsement, the NQF standing committee agreed that there is evidence that lack of adherence to medication leads to relapse and negative outcomes and that claims data related to medication adherence are directly correlated to outcomes.[21]

b. Overview of Measure

The Medication Continuation Following Inpatient Psychiatric Discharge measure (NQF #3205) assesses whether patients admitted to IPFs with diagnoses of MDD, schizophrenia, or bipolar disorder filled at least one evidence-based medication prior to discharge or during the post-discharge period. As detailed in the following discussion, the NQF endorsed this measure on June 28, 2017. For more information about this measure, we refer readers to the measure specifications in the measure technical report *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HospitalQualityInits/Downloads/Version_1-0_Inpatient_Psychiatric_Facility_Medication_Continuation_Public.zip*) or the measure's NQF page (*https://www.qualityforum.org/QPS/3205*).

In compliance with section 1890A(a)(2) of the Act, this measure was included in a publicly available document: ''List of Measures under Consideration for December 1, 2016'' (*https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityMeasures/Downloads/Measures-under-Consideration-List-for-2016.pdf*). The MAP Hospital Workgroup concluded in its December 2016 meeting that the measure addressed a critical quality objective, was evidence-based, and would contribute to efficient use of resources.[22] One Workgroup member commented that it was appropriate to hold IPFs accountable for patients filling a prescription for an evidence-based medication post-discharge.

The MAP Hospital Workgroup classified the measure as ''Refine and Resubmit Prior to Rulemaking.'' [23] The measure received this classification because the MAP recommended that measure testing be completed to demonstrate reliability and validity at the facility level in the hospital setting and that the measure be submitted to NQF for review and endorsement.[24] The MAP also requested additional details on the measure, such as: (1) The definition of medication dispensation; (2) how the facility would know whether the medication was dispensed; and (3) how the measure would be impacted if Medicare Part D coverage is optional.[25] The methodology report for the measure (*https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityMeasures/Downloads/Measures-under-Consideration-List-for-2016.pdf*) that we are proposing here, includes the results of reliability and validity testing, and additional measure updates that occurred after the MAP review. This newest methodology report also provides the additional details requested by MAP at the December 2016 meeting. This includes the specific medication list, which is based on APA and VA/DoD practice guidelines for each medication [26] [27] [28] [29] [30] and information about how facilities can help patients fill prescriptions for medications to ensure that the facility knows that the prescription has been filled. Additionally, the methodology report provides details about measure performance among patients with Part D and the performance gap for this patient population.

This measure was submitted to NQF for endorsement on December 16, 2016. Consistent with the recommendation from the December 2016 MAP meeting that testing for reliability and validity should be completed, in Spring 2017 we refined our NQF submission by providing the complete results of all testing for NQF's review of the measure for endorsement. The measure received NQF endorsement on June 28, 2017.[31]

This measure supports the CMS Meaningful Measure Area ''promote effective prevention and treatment of chronic disease,'' which includes the meaningful measure area of ''prevention, treatment, and management of mental health.'' The measure would also complement the portfolio of facility-level measures in the IPFQR Program that assess the transition from the inpatient to outpatient setting: Follow-Up After Hospitalization for Mental Illness; Thirty-day All Cause Unplanned Readmission Following Psychiatric Hospitalization in an Inpatient Psychiatric Facility; Transition Record with Specified Elements Received by Discharged Patients; and Timely Transmission of Transition Record.

c. Data Sources

The proposed Medication Continuation Following Inpatient Psychiatric Discharge measure (NQF

[19] *https://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=85831.*

[20] *https://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=85831.*

[21] *https://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=85831.*

[22] MAP Hospital Workgroup, Preliminary Analysis Worksheet. December 2016. *http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=84199.*

[23] *http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=84452.*

[24] *http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=84452.*

[25] *http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=84452.*

[26] American Psychiatric Association. (2010). Practice guideline for the treatment of patients with major depressive disorder, 3rd ed. Retrieved from: *http://psychiatryonline.org/pb/assets/raw/sitewide/practice_guidelines/guidelines/mdd.pdf.*

[27] American Psychiatric Association. (2002). Practice guideline for the treatment of patients with bipolar disorder, second edition. Retrieved from: *http://psychiatryonline.org/pb/assets/raw/sitewide/practice_guidelines/guidelines/bipolar.pdf.*

[28] American Psychiatric Association. (2010). Practice guideline for the treatment of patients with schizophrenia: 2nd ed. Retrieved from: *http://psychiatryonline.org/pb/assets/raw/sitewide/practice_guidelines/guidelines/schizophrenia.pdf.*

[29] U.S. Department of Veterans Affairs & U.S. Department of Defense. (2016). Management of major depressive disorder (MDD). Retrieved from: *http://www.healthquality.va.gov/guidelines/MH/mdd/VADoDMDDCPGFINAL82916.pdf.*

[30] U.S. Department of Veterans Affairs & U.S. Department of Defense. (2010) VA/DOD clinical practice guideline for management of bipolar disorder in adults. Retrieved from: *http://www.healthquality.va.gov/guidelines/MH/bd/bd_305_full.pdf.*

[31] *https://www.qualityforum.org/QPS/3205.*

#3205) uses Medicare fee-for-service (FFS) claims to identify whether patients admitted to IPFs with diagnoses of MDD, schizophrenia, or bipolar disorder filled at least one evidence-based medication such that they would have medication for use post-discharge. The performance period for this measure is 24 months. For example, if finalized as proposed, for the FY 2021 payment determination, the performance period would include discharges between July 1, 2017 and June 30, 2019.[32]

d. Measure Calculation

The numerator for the measure includes discharges for patients with a principal diagnosis of MDD, schizophrenia, or bipolar disorder in the denominator who were dispensed at least one evidence-based outpatient medication within 2 days prior to discharge through 30 days post-discharge. The denominator for the measure includes Medicare fee-for-service (FFS) beneficiaries with Part D coverage aged 18 years and older discharged to home or home health care from an IPF with a principal diagnosis of MDD, schizophrenia, or bipolar disorder. The denominator excludes discharges for patients who:

- Received Electroconvulsive Therapy (ECT) during the inpatient stay or 30 day post-discharge period;
- Received Transcranial Magnetic Stimulation (TMS) during the inpatient stay or follow-up;
- Were pregnant during the inpatient stay;
- Had a secondary diagnosis of delirium; or
- Had a principal diagnosis of schizophrenia with a secondary diagnosis of dementia.

For more information about the development of the measure, including rationale for the 2 day prior to 30 day post-discharge period and the denominator exclusions, we refer readers to the measure technical report (*https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HospitalQualityInits/Downloads/Version1-0_Inpatient_Psychiatric_Facility_Medication_Continuation_Public.zip*).

We invite public comment on our proposal to adopt the Medication Continuation Following Inpatient Psychiatric Discharge (NQF #3205) measure for the FY 2021 payment determination and subsequent years as discussed above.

4. Summary of Previously Finalized and Newly Proposed Measures for the FY 2021 Payment Determination and Subsequent Years

The previously finalized number of measures for the FY 2021 payment determination and subsequent years totals 13. In this proposed rule, we are proposing to adopt one additional measure for the FY 2021 payment determination and subsequent years which, if finalized as proposed, would bring the total to 14, as shown in table 18.

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[32] If data availability or operational issues prevent use of this performance period, we would announce the updated performance period through sub-regulatory communications including announcement on a CMS website and/or on our applicable listservs.

Table 18. Previously Finalized and Newly Proposed Measures for the FY 2021 Payment Determination and Subsequent Years

NQF #	Measure ID	Measure
0640	HBIPS-2	Hours of Physical Restraint Use
0641	HBIPS-3	Hours of Seclusion Use
0560	HBIPS-5	Patients Discharged on Multiple Antipsychotic Medications with Appropriate Justification
0576	FUH	Follow-up After Hospitalization for Mental Illness
N/A*	SUB-2 and SUB-2a	Alcohol Use Brief Intervention Provided or Offered and SUB-2a Alcohol Use Brief Intervention
N/A*	SUB-3 and SUB-3a	Alcohol and Other Drug Use Disorder Treatment Provided or Offered at Discharge and SUB-3a Alcohol and Other Drug Use Disorder Treatment at Discharge
N/A*	TOB-2 and TOB-2a	Tobacco Use Treatment Provided or Offered and TOB-2a Tobacco Use Treatment
N/A*	TOB-3 and TOB-3a	Tobacco Use Treatment Provided or Offered at Discharge and Tobacco Use Treatment at Discharge
1659	IMM-2	Influenza Immunization
N/A*	N/A	Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care)
N/A*	N/A	Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care)
N/A	N/A	Screening for Metabolic Disorders
2860	N/A	Thirty-Day All-Cause Unplanned Readmission Following Psychiatric Hospitalization in an Inpatient Psychiatric Facility
3205	N/A	Medication Continuation following Discharge from an IPF

* Measure is no longer endorsed by the NQF but was endorsed at time of adoption. Section 1886(s)(4)(D)(ii) of the Act authorizes the Secretary to specify a measure that is not endorsed by the NQF as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary. We attempted to find available measures for each of these clinical topics that have been endorsed or adopted by a consensus organization and found no other feasible and practical measures on the topics for the IPF setting.

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5. Possible IPFQR Program Measures and Topics for Future Consideration

As we have previously indicated in the FY 2015 IPF PPS final rule (79 FR 45974 through 45975), we seek to develop a comprehensive set of quality measures to be available for widespread use for informed decision-making and quality improvement in the IPF setting. In this proposed rule, we seek public comments on possible new measures or new measure topics. We welcome all comments but are particularly interested in comments on future adoption of one or more measures of patient experience of care based on a consumer survey, especially such as the Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) Survey, and potential future measures and topics as part of CMS' Meaningful Measures Framework.

a. Future Adoption a Patient Experience of Care Survey

In past assessments of the IPFQR Program Measure Set, we identified Patient Experience of Care as a measure gap area for this program (78 FR 50897, 79 FR 45964 through 45965 and 83 FR 38596 through 38597), which is consistent with input from past public comment (77 FR 53653). When we adopted the ''Assessment of Patient Experience of Care Measure'' for the FY 2016 payment determination and subsequent years, we noted that in addition to serving as an indicator of quality within IPFs, information gathered through the collection of this measure would be helpful in developing a standardized survey as a successor to the measure (79 FR 45964). When we removed the Assessment of Patient Experience of Care measure from the IPFQR Program, we stated we believe that we have now collected sufficient information to inform development of a patient experience of care measure (83 FR 38596).

At that time, several commenters expressed support for ensuring that patients have an opportunity to express their perspectives on their experience of receiving care at an IPF (83 FR 38597). Our analysis of the FY 2018 payment

determination data (that is, data that represents facility assessment of patient experience of care as of December 31, 2016) collected under the Assessment of Patient Experience of Care measure shows that approximately one third of facilities use the Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) survey [33] to assess patient experience of care. This is more than the portion of facilities using any other survey.

We are seeking public comment on how such providers have implemented the survey in their facilities, on whether they use the entire HCAHPS survey, or a subset of the survey questions; and if a subset, which specific questions they use. Additionally, we are seeking public comment on other potential surveys that commenters believe would be appropriate to adopt for the IPFQR Program. We intend to use this information to inform future development and testing of a survey-based patient experience of care measure (or measures) for the inpatient psychiatric patient population.

b. Other Future Measures

In this proposed rule, we are also seeking feedback and suggestions for future measures and topics for the IPFQR Program that align with CMS's Meaningful Measures Framework (FY IPF PPS final rule, 83 FR 38590 through 38591).

E. Public Display and Review Requirements

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53653 through 53654), the FY 2014 IPPS/LTCH PPS final rule (78 FR 50897 through 50898), and the FY 2017 IPPS/LTCH PPS final rule (81 FR 57248 through 57249) for discussion of our previously finalized public display and review requirements. We are not proposing any changes to these requirements.

F. Form, Manner, and Timing of Quality Data Submission for the FY 2021 Payment Determination and Subsequent Years

1. Procedural Requirements for the FY 2021 Payment Determination and Subsequent Years

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53654 through 53655), the FY 2014 IPPS/LTCH PPS final rule (78 FR 50898 through 50899), and the FY 2018 IPPS/LTCH PPS final rule (82 FR 38471 through 38472) for our previously finalized procedural requirements. In this proposed rule, we are not proposing any changes to these policies.

2. Data Submission Requirements for the FY 2021 Payment Determination and Subsequent Years

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53655 through 53657), the FY 2014 IPPS/LTCH PPS final rule (78 FR 50899 through 50900), and the FY 2018 IPPS/LTCH PPS final rule (82 FR 38472 through 38473) for our previously finalized data submission requirements.

Because the Medication Continuation following Discharge from an IPF (NQF #3205) measure is calculated by CMS using Medicare Fee-for-Service claims, there would be no additional data submission requirements for the FY 2021 payment determination and subsequent years. Therefore, in this proposed rule, we are not proposing any changes to our previously finalized data submission policies.

3. Reporting Requirements for the FY 2021 Payment Determination and Subsequent Years

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53656 through 53657), the FY 2014 IPPS/LTCH PPS final rule (78 FR 50900 through 50901), and the FY 2015 IPF PPS final rule (79 FR 45976 through 45977) for our previously finalized reporting requirements. In this proposed rule, we are not proposing any changes to these policies.

4. Quality Measure Sampling Requirements

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53657 through 53658), the FY 2014 IPPS/LTCH PPS final rule (78 FR 50901 through 50902), the FY 2016 IPF PPS final rule (80 FR 46717 through 46719), and the FY 2019 IPF PPS final rule (83 FR 38607 through 38608) discussions for our previously finalized sampling policies. In this proposed rule, we are not proposing any changes to these policies.

5. Non-Measure Data Collection

We refer readers to the FY 2015 IPF PPS final rule (79 FR 45973), the FY 2016 IPF PPS final rule (80 FR 46717), and the FY 2019 IPF PPS final rule (83 FR 38608) for our previously finalized non-measure data collection policies. In this proposed rule, we are not proposing any changes to these policies.

6. Data Accuracy and Completeness Acknowledgement (DACA) Requirements

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53658) for our previously finalized DACA requirements. In this proposed rule, we are not proposing any changes to these requirements.

G. Reconsideration and Appeals Procedures

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53658 through 53659) and the FY 2014 IPPS/LTCH PPS final rule (78 FR 50903) for our previously finalized reconsideration and appeals procedures. In this proposed rule, we are not proposing any changes to these policies.

H. Extraordinary Circumstances Exceptions (ECE) Policy

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53659 through 53660), the FY 2014 IPPS/LTCH PPS final rule (78 FR 50903), the FY 2015 IPF PPS final rule (79 FR 45978), and the FY 2018 IPPS/LTCH PPS final rule (82 FR 38473 through 38474) for our previously finalized ECE policies. In this proposed rule, we are not proposing any changes to these policies.

VI. Collection of Information Requirements

This rule does not propose any new or revised ''collection of information'' requirements as defined under 5 CFR 1320.3 the Paperwork Reduction Act's (PRA) implementing regulations. Nor would it impose any new or revised burden within the context of the PRA of 1995 (44 U.S.C. 3501 *et seq.*). However, we are proposing to make a number of burden adjustments based on updated Bureau of Labor Statistics (BLS) wage figures and more recent facility counts and estimated case data. The adjustments would reduce our overall time estimate by 50,067 hours and increase our cost estimate by $1,820,149.

A. Collection of Information Requirements for the IPFQR Program

With regard to the IPFQR Program, we are proposing to add one new measure (Medication Continuation Following Inpatient Psychiatric Discharge (NQF #3205)) that would impact the FY 2021 payment determination and subsequent years. If finalized as proposed, the measure would be calculated by CMS using IPF submitted claims data. The claims' requirements and burden are approved by OMB under control number 0938–0050 (CMS–2552–10) for our Medicare cost report. The proposed

[33] For more information about the HCAHPS survey, please see *https://www.ahrq.gov/cahps/surveys-guidance/hospital/about/adult_hp_survey.html.*

measure would not impact any of the cost report's data fields or burden estimates as all worksheets and lines would remain unchanged. Similarly, this proposed rule would not impose any new or revised collection of information requirements or burden under OMB control number 0938–1171 (CMS–10432) which contains information about our non-claims based IPFQR Program quality measure and non-quality measure information collection/reporting requirements and burden.

We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53673), the FY 2014 IPPS/LTCH PPS final rule (78 FR 50964, the FY 2015 IPF PPS final rule (79 FR 45978 through 45980), the FY 2016 IPF PPS final rule (80 FR 46720 through 46721), the FY 2017 IPPS/LTCH PPS [34] final rule (81 FR 57265 through 57266), the FY 2018 IPPS/LTCH PPS final rule (82 FR 38507 through 38508), and the FY 2019 IPF PPS final rule (83 FR 38609 through 38612) for a detailed discussion of the burden for the program requirements that we have previously adopted. Information pertaining to the requirements and burden that are currently approved by OMB can be found at *reginfo.gov* under control numbers 0938–0050 and 0938–1171.

B. Adjustments to IPFQR Program Burden Estimates

In the FY 2019 IPF PPS final rule (83 FR 38609), we estimated that reporting measures for the IPFQR Program could be accomplished by a Medical Records and Health Information Technician (BLS Occupation Code: 29–2071) with a median hourly wage of $18.29 per hour (as of May 2016). Since then, BLS (the Bureau of Labor Statistics) has revised their wage data with May 2017 serving as their most recent update.[35] In response, we propose to update our cost estimates using the May 2017 figure of $18.83 per hour, an increase of $0.54 per hour or $1.08 per hour when adjusted by 100 percent to account for fringe benefits and overhead. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer-to-employer and because methods of estimating these costs vary widely from study-to-study. Nonetheless, we believe that doubling the hourly wage rate ($18.83 × 2 = $37.66) to estimate total cost is a reasonably accurate estimation method.

We are also proposing to update our facility count and case estimates to the most recent data available. Specifically, we estimate that there are now approximately 1,679 (down from the previous estimate of 1,734) facilities and that for measures which require reporting on the entire patient population, these facilities will report on an average of 1,283 cases per facility (up from the previous estimate of 1,213). Accordingly, we propose to adjust our currently approved cost estimate from $125,511,558 (see tables 19, 20, and 21) to $127,331,707 (see tables 22, 23, and 24).

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[34] We note that for operational reasons we sometimes publish IPFQR program requirements in the IPPS/LTCH PPS proposed and final rule as opposed to the IPF PPS proposed and final rule.

[35] *https://www.bls.gov/ooh/healthcare/medical-records-and-health-information-technicians.htm.*

Table 19: Currently Approved Burden: Measure Data Collection and Reporting

NQF #	Measure ID	Measure Description	Estimated Cases (per facility)	Effort per Case (hours)	Annual Effort (per facility) (hours)	IPFs	Annual Effort (Total) (hours)	Cost ($)
0640	HBIPS-2	Hours of Physical Restraint Use	1,213	0.25	303.25	1,734	525,835.5	19,235,063
0641	HBIPS-3	Hours of Seclusion Use	1,213	0.25	303.25	1,734	525,835.5	19,235,063
0560	HBIPS-5	Patients Discharged on Multiple Antipsychotic Medications with Appropriate Justification	609	0.25	152.25	1,734	264,001.5	9,657,175
1663	SUB-2 and SUB-2a	Alcohol Use Brief Intervention Provided or Offered	609	0.25	152.25	1,734	264,001.5	9,657,175
1664	SUB-3 and SUB-3a	Alcohol and Other Drug Use Disorder Treatment Provided or Offered at Discharge and Alcohol and Other Drug Use Disorder Treatment at Discharge	609	0.25	152.25	1,734	264,001.5	9,657,175

NQF #	Measure ID	Measure Description	Estimated Cases (per facility)	Effort per Case (hours)	Annual Effort (per facility) (hours)	IPFs	Annual Effort (Total) (hours)	Cost ($)
0576	FUH	Follow-up After Hospitalization for Mental Illness*	0	0	0	0	0	0
1654	TOB-2 TOB-2a	Tobacco Use Treatment Provided or Offered and Tobacco Use Treatment	609	0.25	152.25	1,734	264,001.5	9,657.175
1656	TOB-3 and TOB-3a	Tobacco Use Treatment Provided or Offered at Discharge and Tobacco Use Treatment at Discharge	609	0.25	152.25	1,734	264,001.5	9,657,175
1659	IMM-2	Influenza Immunization	609	0.25	152.25	1,734	264,001.5	9,657,175
647	n/a	Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care)	609	0.25	152.25	1,734	264,001.5	9,657,175

NQF #	Measure ID	Measure Description	Estimated Cases (per facility)	Effort per Case (hours)	Annual Effort (per facility) (hours)	IPFs	Annual Effort (Total) (hours)	Cost ($)
648	n/a	Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care)	609	0.25	152.25	1,734	264,001.5	9,657,175
n/a	n/a	Screening for Metabolic Disorders	609	0.25	152.25	1,734	264,001.5	9,657,175
2860	n/a	Thirty-day all-cause unplanned readmission following Psychiatric hospitalization in an Inpatient Psychiatric Facility*	0	0	0	0	0	0
TOTAL			**7.907**	**Varies**	**1,976.75**	**1,734**	**3,427,685**	**125,384,699**

* CMS will collect this data using Medicare Part A and Part B claims; therefore these measures will not require facilities to submit data on any cases.

Table 20: Currently Approved Burden: Non-Measure Data Collection and Reporting

Tasks	IPFs	Hours per IPF	Total Hours for All IPFs	Wage Rate ($/hr)	Cost per IPF ($)	Total Cost for All IPFs ($)
Non-measure Data Collection and Submission	1,734	2.0	3,468	36.58	73.16	126,859

Table 21: Currently Approved Burden: Total

Requirement	Respondents	Responses	Time (hours)	Cost ($)
Measure Data Collection and Reporting	1,734	13,710,738 (7,907 responses per facility * 1,734 facilities)	3,427,685	125,384,699
Non-Measure Data Collection and Reporting	1,734	4	3,468	126,859
Notice of Participation, Data Accuracy Acknowledgement, and Vendor Authorization Form*	n/a	n/a	n/a	n/a
TOTAL	**1,734**	**13,710,742**	**3,431,153**	**125,511,558**

*The 15 minutes per measure estimate for chart abstraction under Measure Data Collection and Reporting also includes the time for completing and submitting any forms.

Table 22: Proposed Burden Adjustments: Measure Data Collection and Reporting

NQF #	Measure ID	Measure Description	Estimated Cases (per facility)	Effort per Case (hours)	Annual Effort (per facility) (hours)	IPFs	Annual Effort (Total) (hours)	Cost ($)
0640	HBIPS-2	Hours of Physical Restraint Use	1,283	0.25	320.75	1,679	538,539.25	20,281,388
0641	HBIPS-3	Hours of Seclusion Use	1,283	0.25	320.75	1,679	538,539.25	20,281,388
0560	HBIPS-5	Patients Discharged on Multiple Antipsychotic Medications with Appropriate Justification	609	0.25	152.25	1,679	255,627.75	9,626,941
1663	SUB-2 and SUB-2a	Alcohol Use Brief Intervention Provided or Offered	609	0.25	152.25	1,679	255,627.75	9,626,941
1664	SUB-3 and SUB-3a	Alcohol and Other Drug Use Disorder Treatment Provided or Offered at Discharge and Alcohol and Other Drug Use Disorder Treatment at Discharge	609	0.25	152.25	1,679	255,627.75	9,626,941
0576	FUH	Follow-up After Hospitalization for Mental Illness*	0	0	0	0	0	0

NQF #	Measure ID	Measure Description	Estimated Cases (per facility)	Effort per Case (hours)	Annual Effort (per facility) (hours)	IPFs	Annual Effort (Total) (hours)	Cost ($)
1654	TOB-2 TOB-2a	Tobacco Use Treatment Provided or Offered and Tobacco Use Treatment	609	0.25	152.25	1,679	255,627.75	9,626,941
1656	TOB-3 and TOB-3a	Tobacco Use Treatment Provided or Offered at Discharge and Tobacco Use Treatment at Discharge	609	0.25	152.25	1,679	255,627.75	9,626,941
1659	IMM-2	Influenza Immunization	609	0.25	152.25	1,734	255,627.75	9,626,941
647	n/a	Transition Record with Specified Elements Received by Discharged Patients (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care)	609	0.25	152.25	1,679	255,627.75	9,626,941

NQF #	Measure ID	Measure Description	Estimated Cases (per facility)	Effort per Case (hours)	Annual Effort (per facility) (hours)	IPFs	Annual Effort (Total) (hours)	Cost ($)
648	n/a	Timely Transmission of Transition Record (Discharges from an Inpatient Facility to Home/Self Care or Any Other Site of Care)	609	0.25	152.25	1,679	255,627.75	9,626,941
n/a	n/a	Screening for Metabolic Disorders	609	0.25	152.25	1,679	255,627.75	9,626,941
2860	n/a	Thirty-day all-cause unplanned readmission following Psychiatric hospitalization in an Inpatient Psychiatric Facility*	0	0	0	0	0	0
TOTAL			**7.907**	**Varies**	**2,011.75**	**1,679**	**3,377,728**	**127,205,245**

* CMS will collect this data using Medicare Part A and Part B claims; therefore these measures will not require facilities to submit data on any cases.

Table 23: Proposed Burden Adjustments: Non-Measure Data Collection and Reporting

Tasks	IPFs	Hours per IPF	Total Hours for All IPFs	Wage Rate ($/hr)	Cost per IPF ($)	Total Cost for All IPFs ($)
Non-measure Data Collection and Submission	1,679	2.0	3,358	37.66	75.32	126,462

Table 24: Proposed Burden Adjustments: Total

Requirement	Respondents	Responses	Time (hours)	Cost ($)
Measure Data Collection and Reporting	1,679	11,915,863 (7,097 responses per facility * 1,679 facilities)	3,377,728	127,205,245
Non-Measure Data Collection and Reporting	1,679	4	3,358	126,462
Notice of Participation, Data Accuracy Acknowledgement, and Vendor Authorization Form*	n/a	n/a	n/a	n/a
TOTAL	**1,679**	**11,915,867**	**3,381,086**	**127,331,707**

*The 15 minutes per measure estimate for chart abstraction under Measure Data Collection and Reporting also includes the time for completing and submitting any forms.

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As mentioned above, the adjustments are in response to updates to BLS wage figures and more recent facility counts and estimated case data. They are not a result of any of the provisions proposed in this rule. The adjusted burden figures will be submitted to OMB for approval under control number 0938–1171 (CMS–10432) as a non-substantive change.

C. Submission of PRA-Related Comments

We invite public comments on our proposed burden adjustments as well as on any of the information collection requirements/burden set out under OMB control number 0938–1171. If you wish to comment, identify the rule (CMS–1712–P) along with the information collection's CMS ID number (CMS–10432) and OMB control number (0938–1171).

To obtain copies of the supporting statement and any applicable supplementary materials, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB control number, and CMS document identifier to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at 410–786–1326.

See this rule's **DATES** and **ADDRESSES** sections for the comment due date and for additional instructions.

VII. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VIII. Regulatory Impact Statement

A. Statement of Need

This rule proposes updates to the prospective payment rates for Medicare inpatient hospital services provided by IPFs for discharges occurring during FY 2020 (October 1, 2019 through September 30, 2020). We propose to apply the proposed 2016-based IPF market basket increase of 3.1 percent, less the productivity adjustment of 0.5 percentage point as required by 1886(s)(2)(A)(i) of the Act, and further reduced by 0.75 percentage point as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(E) of the Act, for a proposed total FY 2020 payment rate update of 1.85 percent. In this proposed rule, we are proposing to revise and rebase the IPF market basket to reflect a 2016 base year. We also are proposing to align the IPF wage index data with the concurrent IPPS wage index data by removing the 1-year lag of the pre-floor, pre-reclassified IPPS hospital wage index upon which the IPF wage index is based. We also are proposing to update the IPF labor-related share and the IPF wage index including adoption of a new OMB designation, and are soliciting comments on the IPF wage index. Finally, we are proposing updates to the IPFQR Program for the FY 2021 payment determination and subsequent years.

B. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96 354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)) and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule is not economically significant under Executive Order 12866.

We estimate that the total proposed impact of these changes for FY 2020 payments compared to FY 2019 payments will be a net increase of approximately $75 million. This reflects an $80 million increase from the update to the payment rates (+$135 million from the fourth quarter 2018 IGI forecast of the proposed 2016-based IPF market basket of 3.1 percent, −$20 million for the productivity adjustment of 0.5 percentage point, and −$35 million for the ''other adjustment'' of 0.75 percentage point), as well as a $5 million decrease as a result of the update to the outlier threshold amount. Outlier payments are estimated to change from 2.15 percent in FY 2019 to 2.00 percent of total estimated IPF payments in FY 2020.

C. Anticipated Effects

In this section, we discuss the historical background of the IPF PPS and the impact of this proposed rule on the Federal Medicare budget and on IPFs.

1. Budgetary Impact

As discussed in the November 2004 and RY 2007 IPF PPS final rules, we applied a budget neutrality factor to the federal per diem base rate and ECT payment per treatment to ensure that total estimated payments under the IPF PPS in the implementation period would equal the amount that would have been paid if the IPF PPS had not been implemented. The budget neutrality factor includes the following components: Outlier adjustment, stop-loss adjustment, and the behavioral offset. As discussed in the RY 2009 IPF PPS notice (73 FR 25711), the stop-loss adjustment is no longer applicable under the IPF PPS.

As discussed in section III.D.1 of this proposed rule, we are using the wage index and labor-related share in a budget neutral manner by applying a wage index budget neutrality factor to the federal per diem base rate and ECT payment per treatment. Therefore, the budgetary impact to the Medicare program of this proposed rule will be due to the market basket update for FY 2020 of 3.1 percent (see section III.A.4 of this proposed rule) less the productivity adjustment of 0.5 percentage point required by section 1886(s)(2)(A)(i) of the Act; further reduced by the ''other adjustment'' of 0.75 percentage point under sections 1886(s)(2)(A)(ii) and 1886 (s)(3)(E) of the Act; and the update to the outlier fixed dollar loss threshold amount.

We estimate that the FY 2020 impact will be a net increase of $75 million in payments to IPF providers. This reflects an estimated $80 million increase from the update to the payment rates and a $5 million decrease due to the update to the outlier threshold amount to set total estimated outlier payments at 2.0 percent of total estimated payments in FY 2020. This estimate does not include the implementation of the required 2.0 percentage point reduction of the market basket increase factor for any IPF that fails to meet the IPF quality reporting requirements (as discussed in section V.A. of this proposed rule).

The RFA requires agencies to analyze options for regulatory relief of small entities if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IPFs and most other providers and suppliers are small entities, either by nonprofit status or having revenues of $7.5 million to $38.5 million or less in any 1 year, depending on industry classification (for details, refer to the SBA Small Business Size Standards found at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*). Individuals and states are not included in the definition of a small entity.

Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IPFs or the proportion of IPFs' revenue derived from Medicare payments. Therefore, we assume that all IPFs are considered small entities.

The Department of Health and Human Services generally uses a revenue

impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 25, we estimate that the overall revenue impact of this proposed rule on all IPFs is to increase estimated Medicare payments by approximately 1.7 percent. As a result, since the estimated impact of this proposed rule is a net increase in revenue across almost all categories of IPFs, the Secretary has determined that this proposed rule will have a positive revenue impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. As discussed in section VIII.C.1 of this proposed rule, the rates and policies set forth in this proposed rule will not have an adverse impact on the rural hospitals based on the data of the 258 rural excluded psychiatric units and 66 rural psychiatric hospitals in our database of 1,593 IPFs for which data were available. Therefore, the Secretary has determined that this proposed rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. This proposed rule does not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector of $154 million or more.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This proposed rule will not have a substantial effect on state and local governments.

2. Impact on Providers

To show the impact on providers of the changes to the IPF PPS discussed in this proposed rule, we compare estimated payments under the IPF PPS rates and factors for FY 2020 versus those under FY 2019. We determined the percent change in the estimated FY 2020 IPF PPS payments compared to the estimated FY 2019 IPF PPS payments for each category of IPFs. In addition, for each category of IPFs, we have included the estimated percent change in payments resulting from the update to the outlier fixed dollar loss threshold amount; the updated wage index data including the updated labor-related share; and the market basket update for FY 2020, as adjusted by the productivity adjustment according to section 1886(s)(2)(A)(i) of the Act, and the ''other adjustment'' according to sections 1886(s)(2)(A)(ii) and 1886(s)(3)(E) of the Act.

To illustrate the impacts of the FY 2020 changes in this proposed rule, our analysis begins with a FY 2019 baseline simulation model based on FY 2018 IPF payments inflated to the midpoint of FY 2019 using IHS Global Inc.'s fourth quarter 2018 forecast of the market basket update (see section III.A.4 of this proposed rule); the estimated outlier payments in FY 2019; the FY 2019 IPF wage index; the FY 2019 labor-related share; and the FY 2019 percentage amount of the rural adjustment. During the simulation, total outlier payments are maintained at 2 percent of total estimated IPF PPS payments.

Each of the following changes is added incrementally to this baseline model in order for us to isolate the effects of each change:

- The proposed update to the outlier fixed dollar loss threshold amount.
- The proposed FY 2020 IPF wage index and the proposed FY 2020 labor-related share.
- The proposed market basket update for FY 2020 of 3.1 percent less the productivity adjustment of 0.5 percentage point in accordance with section 1886(s)(2)(A)(i) of the Act and further reduced by the ''other adjustment'' of 0.75 percentage point in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(E) of the Act, for a proposed payment rate update of 1.85 percent.

Our final column comparison in Table 25 illustrates the percent change in payments from FY 2019 (that is, October 1, 2018, to September 30, 2019) to FY 2020 (that is, October 1, 2019, to September 30, 2020) including all the payment policy changes in this proposed rule.

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Table 25. IPF Impacts for FY 2020

[Percent Change in columns 3 through 5]

Facility by Type	Number of Facilities	Outlier	CBSA Wage Index & Labor Share[1]	Total Percent Change[2]
(1)	(2)	(3)	(4)	(5)
All Facilities	1,593	-0.15	0.00	1.70
Total Urban	1,269	-0.15	0.01	1.71
Urban unit	792	-0.24	-0.07	1.54
Urban hospital	477	-0.05	0.12	1.92
Total Rural	324	-0.15	-0.05	1.63
Rural unit	258	-0.18	-0.07	1.56
Rural hospital	66	-0.06	-0.02	1.80
By Type of Ownership:				
Freestanding IPFs				
Urban Psychiatric Hospitals				
Government	121	-0.25	-0.11	1.55
Non-Profit	100	-0.05	-0.11	1.70
For-Profit	256	-0.01	0.23	2.07
Rural Psychiatric Hospitals				
Government	32	-0.10	-0.28	1.53
Non-Profit	15	-0.20	-0.38	1.29
For-Profit	19	0.00	0.22	2.07
IPF Units				
Urban				
Government	117	-0.37	0.13	1.62
Non-Profit	510	-0.25	-0.05	1.55
For-Profit	165	-0.12	-0.26	1.46
Rural				
Government	69	-0.19	0.04	1.67
Non-Profit	136	-0.19	0.04	1.66
For-Profit	53	-0.15	-0.46	1.20

By Teaching Status:				
Non-teaching	1,403	-0.12	-0.03	1.69
Less than 10% interns and residents to beds	108	-0.24	0.10	1.72
10% to 30% interns and residents to beds	60	-0.37	0.26	1.74
More than 30% interns and residents to beds	22	-0.45	0.76	2.19
By Region:				
New England	105	-0.14	-0.73	0.98
Mid-Atlantic	230	-0.20	0.01	1.66
South Atlantic	243	-0.11	-0.15	1.58
East North Central	269	-0.13	-0.21	1.49
East South Central	161	-0.13	-0.59	1.10
West North Central	117	-0.21	0.50	2.14
West South Central	236	-0.09	0.11	1.86
Mountain	105	-0.10	-0.57	1.16
Pacific	127	-0.25	1.43	3.07
By Bed Size:				
Psychiatric Hospitals				
Beds: 0-24	86	-0.05	0.01	1.81
Beds: 25-49	90	-0.04	-0.28	1.54
Beds: 50-75	87	-0.02	0.13	1.97
Beds: 76 +	280	-0.07	0.21	2.01
Psychiatric Units				
Beds: 0-24	605	-0.22	-0.12	1.48
Beds: 25-49	271	-0.19	-0.15	1.51
Beds: 50-75	108	-0.25	0.15	1.75
Beds: 76 +	66	-0.28	-0.02	1.57

[1]This column is uses the proposed FY 2020 IPF wage index, which is based upon the concurrent pre-floor, pre-reclassified IPPS hospital wage index.

[2] This column includes the impact of the updates in columns (3) and (4) above, and of the IPF market basket increase factor for FY 2020 (3.1 percent), reduced by 0.5 percentage point for the productivity adjustment as required by section 1886(s)(2)(A)(i) of the Act, and reduced by 0.75 percentage point in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(E) of the Act.

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3. Impact Results

Table 25 displays the results of our analysis. The table groups IPFs into the categories listed here based on characteristics provided in the Provider of Services (POS) file, the IPF provider specific file, and cost report data from the Healthcare Cost Report Information System:

- Facility Type.
- Location.
- Teaching Status Adjustment.
- Census Region.
- Size.

The top row of the table shows the overall impact on the 1,593 IPFs included in this analysis. In column 3, we present the effects of the update to the outlier fixed dollar loss threshold amount. We estimate that IPF outlier payments as a percentage of total IPF payments are 2.15 percent in FY 2019. Thus, we are adjusting the outlier threshold amount in this proposed rule to set total estimated outlier payments equal to 2.0 percent of total payments in FY 2020. The estimated change in total IPF payments for FY 2020, therefore, includes an approximate 0.15 percent decrease in payments because the outlier portion of total payments is expected to decrease from approximately 2.15 percent to 2.0 percent.

The overall impact of this outlier adjustment update (as shown in column 3 of Table 25), across all hospital groups, is to decrease total estimated payments to IPFs by 0.15 percent. The largest decrease in payments is estimated to be −0.45 percent for teaching IPFs with more than 30 percent interns and residents to beds.

In column 4, we present the effects of the budget-neutral update to the IPF wage index and the Labor-Related Share

(LRS). This represents the effect of using the concurrent hospital wage data and taking into account the updated OMB delineations. That is, the impact represented in this column reflects the update from the FY 2019 IPF wage index to the proposed FY 2020 IPF wage index, which includes basing the FY 2020 IPF wage index on the FY 2020 pre-floor, pre-reclassified IPPS hospital wage index data, updating the OMB designations for two counties in Idaho, and updating the LRS from 74.8 percent in FY 2019 to 76.8 percent in FY 2020. We note that there is no projected change in aggregate payments to IPFs, as indicated in the first row of column 4, however, there will be distributional effects among different categories of IPFs. For example, we estimate the largest increase in payments to be 1.43 percent for Pacific IPFs, and the largest decrease in payments to be 0.73 percent for New England IPFs.

Finally, column 5 compares our estimates of the total proposed changes reflected in this proposed rule for FY 2020 to the estimates for FY 2019 (without these changes). The average estimated increase for all IPFs is approximately 1.7 percent. This estimated net increase includes the effects of the proposed 3.1 percent 2016-based market basket update reduced by the productivity adjustment of 0.5 percentage point, as required by section 1886(s)(2)(A)(i) of the Act and further reduced by the ''other adjustment'' of 0.75 percentage point, as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(E) of the Act. It also includes the overall estimated 0.15 percent decrease in estimated IPF outlier payments as a percent of total payments from the proposed update to the outlier fixed dollar loss threshold amount. Column 5 also includes the distributional effects of the updates to the IPF wage index and the labor-related share.

IPF payments are estimated to increase by 1.71 percent in urban areas and 1.63 percent in rural areas. Overall, IPFs are estimated to experience a net increase in payments as a result of the updates in this proposed rule. The largest payment increase is estimated at 3.07 percent for IPFs in the Pacific region.

4. Effect on Beneficiaries

Under the IPF PPS, IPFs will receive payment based on the average resources consumed by patients for each day. We do not expect changes in the quality of care or access to services for Medicare beneficiaries under the FY 2020 IPF PPS, but we continue to expect that paying prospectively for IPF services will enhance the efficiency of the Medicare program.

5. Effects of Updates to the Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program

As discussed in section V. of this proposed rule and in accordance with section 1886(s)(4)(A)(i) of the Act, we will implement a 2 percentage point reduction in the market basket update when calculating the FY 2021 national per diem rate for discharges from IPFs that have failed to comply with the IPFQR Program requirements for the FY 2021 payment determination. In section II.B. of this proposed rule, we discuss how the 2 percentage point reduction will be applied. For the FY 2019 payment determination (that is, data submitted in CY 2018), of the 1,679 IPFs eligible for the IPFQR Program, 50 did not receive the full market basket update due to reasons specific to the IPFQR Program; 24 of these IPFs chose not to participate and 26 did not meet the requirements of the Program. Thus, we estimate similar numbers for the FY 2021 payment determination and that the IPFQR Program will have a negligible impact on overall IPF payments in FY 2021.

We are proposing provisions that impact the FY 2021 payment determination and subsequent years. We refer readers to section VI. of the preamble of this proposed rule for details discussing information collection requirements for the IPFQR Program. We intend to closely monitor the effects of this quality reporting program on IPFs and to help facilitate successful reporting outcomes through ongoing stakeholder education, national trainings, and a technical help desk.

6. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review this proposed rule, we assume that the total number of unique commenters on the most recent IPF proposed rule from FY 2019 (83 FR 38576) will be the number of reviewers of this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this proposed rule. It is possible that not all commenters reviewed the FY 2019 IPF proposed rule in detail, and it is also possible that some reviewers chose not to comment on that proposed rule. For these reasons we thought that the number of past commenters would be a fair estimate of the number of reviewers of this proposed rule. We solicit comments on this assumption.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule; therefore, for the purposes of our estimate, we assume that each reviewer reads approximately 50 percent of the proposed rule. We solicit comments on this assumption.

Using the May, 2017 mean (average) wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this proposed rule is $107.38 per hour, including overhead and fringe benefits (*https://www.bls.gov/oes/current/oes119111.htm*). Assuming an average reading speed of 250 words per minute, we estimate that it would take approximately 1.3 hours for the staff to review half of this proposed rule. For each IPF that reviews the proposed rule, the estimated cost is (1.3 hours × $107.38) or $139.59. Therefore, we estimate that the total cost of reviewing this proposed rule is $12,283.92 ($139.59 × 88 reviewers).

D. Alternatives Considered

The statute does not specify an update strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, we are updating the IPF PPS using the methodology published in the November 2004 IPF PPS final rule; applying the proposed FY 2020 2016-based IPF PPS market basket update of 3.1 percent, reduced by the statutorily required multifactor productivity adjustment of 0.5 percentage point and the ''other adjustment'' of 0.75 percentage point, along with the proposed wage index budget neutrality adjustment to update the payment rates; proposing a FY 2020 IPF wage index which is fully based upon the OMB CBSA designations from Bulletin 17–01 and which uses the FY 2020 pre-floor, pre-reclassified IPPS hospital wage index as its basis; and implementing changes to the IPFQR Program.

E. Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*), in Table 26, we have prepared an accounting statement showing the classification of the expenditures associated with the proposed updates to the IPF wage index and payment rates in this proposed rule. Table 26 provides our best estimate of the increase in Medicare payments under the IPF PPS as a result of the changes presented in

this proposed rule and based on the data for 1,593 IPFs in our database.

TABLE 26—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

Change in Estimated Impacts from FY 2019 IPF PPS to FY 2020 IPF PPS

Category	Transfers
Annualized Monetized Transfers.	$75 million.
From Whom to Whom?.	Federal Government to IPF Medicare Providers.

F. Conclusion

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Dated: March 29, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 2, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–07884 Filed 4–18–19; 4:15 pm]

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Part III

Department of Energy

10 CFR Part 431
Energy Conservation Program: Test Procedures for Small Electric Motors and Electric Motors; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2017–BT–TP–0047]

RIN 1904–AE18

Energy Conservation Program: Test Procedures for Small Electric Motors and Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (DOE) proposes amending its test procedures for small electric motors. First, DOE proposes further harmonizing its procedures with industry practice by incorporating a new industry standard manufacturers would be permitted to use in addition to the industry standards currently incorporated by reference as options for use when testing small electric motor efficiency. Second, with respect to electric motors, DOE proposes further harmonizing its test procedures by incorporating an additional industry standard to the two that are already incorporated by reference as options when testing the efficiency of this equipment. Each of these changes is expected to reduce testing burdens on manufacturers. Finally, DOE proposes to adopt industry provisions related to the test conditions to ensure the comparability of test results for small electric motors. None of these proposed changes would affect the measured average full-load efficiency of small electric motors or the measured nominal full-load efficiency of electric motors when compared to the current test procedures.

DATES: DOE will accept comments, data, and information regarding this proposal no later than June 24, 2019. See section V, ''Public Participation,'' for details. DOE will hold a public meeting on this proposed test procedure if one is requested by May 7, 2019.

ADDRESSES: Any comments submitted must identify the Test Procedure NOPR for small electric motors and electric motors and provide docket number EERE–2017–BT–TP–0047 and/or regulatory information number (RIN) 1904–AE18. Comments may be submitted using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: SmallElectricMotors2017TP0047@ee.doe.gov. Include the docket number and/or RIN in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting written comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov*. All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *http://www.regulations.gov/#!docketDetail;D=EERE-2017-BT-TP-0047*. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V.A for information on how to submit comments through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov*.

For further information on how to submit a comment, review other public comments and the docket, or to request a public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: DOE proposes to maintain previously approved incorporations by reference or newly incorporate by reference the following industry standards into 10 CFR part 431:

(1) Canadian Standards Association (CSA) CSA Standard C390–10, ''Test methods, marking requirements, and energy efficiency levels for three-phase induction motors.''

(2) CSA Standard C747–09, ''Energy efficiency test methods for small motors.''

Copies of CSA C390–10 and CSA C747–09 can be obtained from Canadian Standards Association, Sales Department, 5060 Spectrum Way, Suite 100, Mississauga, Ontario, L4W 5N6, Canada, 1–800–463–6727, or *http://www.shopcsa.ca/onlinestore/welcome.asp*.

(3) IEEE 112–2004, ''IEEE Standard Test Procedure for Polyphase Induction Motors and Generators.''

(4) IEEE 112–2017, ''IEEE Standard Test Procedure for Polyphase Induction Motors and Generators.''

(5) IEEE Standard 114–2010, ''Test Procedure for Single-Phase Induction Motors.''

Copies of IEEE 112–2004, IEEE 112–2017, and IEEE 114–2010 can be obtained from: IEEE, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, (732) 981–0060, or by visiting *http://www.ieee.org*.

(6) IEC 60034–2–1:2014, ''Rotating electrical machines—Part 2–1: Standard methods for determining losses and efficiency from tests (excluding machines for traction vehicles).''

(7) IEC 60034–1:2010, ''Rotating electric machines—Part 1: Rating and performance''.

(8) IEC 60051–1:2016, ''Direct acting indicating analogue electrical measuring instruments and their accessories—Part 1: Definitions and general requirements common to all parts''.

Copies of IEC 60034–2–1:2014, IEC 60034–1:2010, and IEC 60051–1:2016 may be purchased from International Electrotechnical Commission, 3 rue de Varembé, 1st floor, P.O. Box 131, CH—1211 Geneva 20—Switzerland, +41 22 919 02 11, or by going to *https://webstore.iec.ch/home*.

(9) National Electrical Manufacturers Association (NEMA) MG 1–2016, ''Motors and Generators.''

Copies of NEMA MG 1–2016 may be purchases from National Electrical

Manufacturers Association, 1300 North 17th Street, Suite 900, Arlington, Virginia 22209, +1 703 841 3200, or by going to *https://www.nema.org*.

For a further discussion of these standards, see section IV.N.

Table of Contents

I. Authority and Background

DOE is authorized to establish and amend energy conservation standards and test procedures for small electric motors and electric motors.[1] (42 U.S.C. 6311(1)(A); 42 U.S.C. 6317(b)) The current DOE test procedures for small electric motors appear at Title 10 of the Code of Federal Regulations (''CFR'') section 431.444. The current DOE test procedures for electric motors appear in appendix B to subpart B of 10 CFR part 431 (''Appendix B''). The following sections discuss DOE's authority to amend test procedures for small electric motors and electric motors, as well as relevant background information regarding DOE's consideration of test procedures for these motors.

A. Authority

The Energy Policy and Conservation Act of 1975, as amended (''EPCA'')[2] (42 U.S.C. 6291–6317), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and industrial equipment. In 1978, Title III, Part C[3] of EPCA was added by section 441(a) of Title IV of the National Energy Conservation Policy Act, Public Law 95–619 (November 9, 1978), which established the Energy Conservation Program for Certain Industrial Equipment, and set forth a variety of provisions designed to improve the energy efficiency of certain industrial equipment. Later, in 1992, the Energy Policy Act of 1992, Public Law 102–486 (October 24, 1992), further amended EPCA by adding, among other things, provisions governing the regulation of small electric motors. EPCA was further amended by the American Energy Manufacturing Technical Corrections Act, Public Law 112–210 (December 18, 2012), which explicitly permitted DOE to examine the possibility of regulating ''other motors'' in addition to those electric and small electric motors that Congress had already otherwise defined and required DOE to regulate. (42 U.S.C. 6311(1)(A), 6311(2)(B)(xiii); 42 U.S.C. 6317(b))

Under EPCA, DOE's energy conservation program consists of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of the Act include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). EPCA includes specific authority to establish test procedures and standards for small electric motors. (42 U.S.C. 6317(b))

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297)

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment. (42 U.S.C. 6314(d)) Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Under 42 U.S.C. 6314, EPCA sets forth criteria and procedures for prescribing and amending test procedures for covered equipment. EPCA provides in relevant part that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use, or estimated annual operating cost of covered equipment during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6314(b))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment including small electric motors, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect the energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)) If the

[1] EPCA authorized DOE to establish and amend energy conservation standards and test procedure for small electric motors pending a determination of feasibility and justification (42 U.S.C. 6317(b)), completed on July 10, 2006. 71 FR 38799

[2] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (October 23, 2018).

[3] For editorial purposes, upon codification into the U.S. Code, Part C was re-designated as Part A–1.

Secretary determines that a test procedure amendment is warranted, the Secretary must publish proposed test procedures in the **Federal Register**, and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)) DOE is publishing this NOPR to satisfy the 7-year review requirement specified in EPCA, which requires that DOE publish either a final rule amending the test procedures or a determination that amended test procedures are not required. (42 U.S.C. 6314(a)(1)(A))

B. Background

EPCA defines ''small electric motor,'' as ''a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG 1–1987.'' (42 U.S.C. 6311(13)(G)) (The term ''NEMA'' refers to the National Electrical Manufacturers Association.) EPCA directed DOE to establish a test procedure for small electric motors for which DOE makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings. (42 U.S.C. 6317(b)(1)) On July 10, 2006, DOE published its determination that energy conservation standards for certain polyphase and certain single-phase, capacitor-start, induction-run, small electric motors are technologically feasible and economically justified, and would result in significant energy savings. 71 FR 38799. In a final rule published July 7, 2009, DOE adopted test procedures for small electric motors. 74 FR 32059. EPCA also required that following establishment of the required test procedures, DOE establish energy conservation standards for those small electric motors for which test procedures were prescribed. (42 U.S.C. 6317(b)(2)) In a final rule published on March 9, 2010 (the ''March 2010 ECS final rule''), DOE adopted energy conservation standards for small electric motors. 75 FR 10874.[4]

Subsequently, DOE updated the test procedures for small electric motors on May 4, 2012 (the ''May 2012 EM/SEM TP final rule''). 77 FR 26608. The existing test procedures for small electric motors appear at 10 CFR 431.444, and incorporate certain industry standards from the Institute of Electrical and Electronics Engineers (''IEEE'') and Canadian Standards Association (''CSA''), as listed in Table I–1.

TABLE I–1—INDUSTRY STANDARDS CURRENTLY INCORPORATED BY REFERENCE FOR SMALL ELECTRIC MOTORS

Equipment description	Industry test procedure
Single-phase small electric motors	IEEE 114–2010, CSA C747–09.
Polyphase small electric motors less than or equal to 1 horsepower	IEEE 112–2004 Test Method A, CSA C747–09.
Polyphase small electric motors greater than 1 horsepower	IEEE 112–2004 Test Method B, CSA C390–10.

DOE published a request for information pertaining to the test procedures for small electric motors and electric motors. 82 FR 35468 (July 31, 2017) (the ''July 2017 TP RFI''). In the July 2017 TP RFI, DOE solicited public comments, data, and information on all aspects of, and any issues or problems with, the existing DOE test procedure for small electric motors, including on any needed updates or revisions. DOE also discussed potential categories of electric motors (as defined at 10 CFR 431.12) that may be considered in future DOE test procedures. 82 FR at 35470–35474. At the request of commenters, DOE extended the comment period for the July 2017 TP RFI in a notice published on August 30, 2017. 82 FR 41179.

DOE received a number of comments in response to the July 2017 TP RFI.[5] This NOPR proposes to further clarify the test procedures for small electric motors and incorporate an additional industry test method for testing small electric motors and electric motors. Comments regarding other matters related to electric motors are not addressed in this document. DOE also notes that it received a number of comments unrelated to either small electric motors or electric motors—these are also not addressed.[6]

II. Synopsis of the Notice of Proposed Rulemaking

In this notice of proposed rulemaking (''NOPR''), DOE proposes to update 10 CFR part 431 as follows:

(1) Incorporate by reference a revised test procedure for the measurement of energy efficiency in small electric motors and electric motors, the Institute of Electrical and Electronics Engineers (''IEEE'') 112–2017, ''IEEE Standard Test Procedure for Polyphase Induction Motors and Generators;''

(2) Incorporate by reference an alternative test procedure for the measurement of energy efficiency in small electric motors and electric motors, the International Electrotechnical Commission (''IEC'') 60034–2–1:2014, ''Standard methods for determining losses and efficiency from tests (excluding machines for traction vehicles);''

Add definitions for ''rated load'', ''rated output power'', and ''breakdown torque'' of small electric motors based on NEMA MG 1–2016; and

Specify the frequency used for testing and specify that manufacturers select the voltage used for testing

Table II–1 summarizes the proposed test procedure amendments compared to the current test procedure as well as the reason for the change.

[4] A technical correction was published on April 5, 2010, to correct the compliance date. 75 FR 17036.

[5] All comments received in response to the July 2017 TP RFI are available for review at *http://www.regulations.gov* under docket number EERE–2017–BT–TP–0047.

[6] Anonymous, No. 9, No. 11, No. 12, No. 13, No. 14, No. 15, and No. 17; Raymond Calore, No. 10.

TABLE II–1—SYNOPSIS OF THE NOTICE OF PROPOSED TEST PROCEDURE

Current test procedure	Proposed test procedure	Reason for proposed change
Incorporates by reference IEEE 112–2004 to measure full-load efficiency of polyphase small electric motors.	—Adds IEEE 112–2017 as an alternative to IEEE 112–2004. This latest version: —Updates certain requirements regarding measurement instrument selection and accuracy. —Aligns core loss calculation with CSA 390–10 and Method 2–1–1B of IEC 60034–2–1:2014.	Achieve consistency with industry update to IEEE 112.
Does not incorporate by reference IEC 60034–2–1:2014	—Adds Method 2–1–1B of IEC 60034–2–1:2014 as an alternative to IEEE 112–2004 Test Method B, IEEE 112–2017 Test Method B and CSA C390–10. —Adds method 2–1–1A of IEC 60034–2–1:2014 as an alternative to IEEE 114–2010, IEEE 112–2004, IEEE 112–2017 Test Method A and CSA C747–09.	Address suggestions offered in industry petition (EERE–2017–BT–TP–0047–0030).
For Small Electric Motors: Specifies testing at rated load but does not define that term.	—Adds definition for ''rated load'' (and ''rated output power'' and ''breakdown torque'' to support the definition of ''rated load'') of small electric motors based on NEMA MG 1–2016.	Harmonize with definitions from industry standards.
For Small Electric Motors: Specifies testing at rated voltage and rated frequency, but does not define those terms.	—Adds a definition for rated voltage, which provides that manufacturers select the voltage that is used for testing, and a definition for rated frequency.	Improved repeatability of the test procedure.

DOE has tentatively determined that the proposed amendments described in section III of this NOPR would not alter the measured efficiency of small electric motors or electric motors, and that the proposed test procedures would not be unduly burdensome to conduct. Discussion of DOE's proposed actions are addressed in detail in section III of this NOPR.

III. Discussion

A. Scope of the Test Procedures for Currently Regulated Small Electric Motors and Electric Motors

This NOPR does not propose changes to the scope of the test procedure with respect to small electric motors and electric motors. DOE discusses test procedure scoping issues for currently regulated motors in sections III.A.1 through III.A.3 of this document.

1. Definitions Relevant to ''Small Electric Motor''

EPCA defines the term ''small electric motor'' as ''a NEMA general purpose alternating-current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG 1–1987.'' 42 U.S.C. 6311(13)(G) After considering comments received on its proposal for establishing test procedures for evaluating small electric motor efficiency, DOE adopted a modified version of this definition at 10 CFR 431.442 in an attempt to clarify that the term also encompassed those motors that were built as ''IEC metric equivalent motors.'' 74 FR 32059, 32062. DOE made this adjustment to its regulatory definition to ensure that those motors that otherwise satisfied the small electric motor definition but were built in accordance with metric-units would be treated in a like manner as their counterparts that were built in accordance with U.S. customary units of measurement. DOE offered three primary reasons in support of this approach.

First, IEC-equivalent small electric motors generally can perform the identical functions of those motors strictly defined under EPCA. DOE noted that the differences in criteria between the relevant IEC and MG 1–1987 provisions lay in the nomenclature, units of measurement, standard motor configurations and design details—not in the function of the motor itself. Consequently, DOE concluded that in most general purpose applications, IEC motors can be used interchangeably with small electric motors built in accordance with MG 1–1987. See 74 FR 32059, 32062.

Second, a broad exclusion of IEC-equivalent motors from DOE's regulatory framework would create a regulatory gap. Moreover, any efficiency standards applying to small electric motors built according to MG 1–1987's specified units of measurement would be readily applicable to IEC motors. See 74 FR 32059, 32062.

Finally, treating IEC-based motors as falling outside of the small electric motor definition would effectively provide preferential treatment to manufacturers of IEC motors. DOE noted at the time that the creation of such a situation would likely lead to a reduction in the production of NEMA (*i.e.,* MG 1–1987-based) motors while encouraging the increased production of IEC motors that, if unaddressed, would be inadvertently treated as unregulated motors. See 74 FR 32059, 32062.

The current definition at 10 CFR 431.442 lists the criteria that must be met for a motor to be defined as a ''small electric motor.'' Under these criteria, a small electric motor is:

- A NEMA general purpose motor[7] that
  - Uses alternating current, and
  - Is single-speed, and
  - Is an induction motor; and
  - Is built in a two-digit frame size in accordance with NEMA Standards Publication MG 1–1987, including IEC metric equivalent motors.

See 10 CFR 431.442.

In response to the July 2017 TP RFI, NEMA supported maintaining all existing criteria specified in the current regulatory definition. (NEMA, No. 24, at p. 7)[8] No other commenters argued in favor of altering the current definition. Accordingly, DOE is not proposing to modify the definition of small electric motor. However, a number of issues

[7] In response to questions from NEMA and various motor manufacturers, DOE issued a guidance document that identifies some key design elements that manufacturers should consider when determining whether a given individual motor meets the small electric motor definition and is subject to the energy conservation standards promulgated for small electric motors. See *https://www.regulations.gov/document?D=EERE-2017-BT-TP-0047-0082*.

[8] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop test procedures for small electric motors and electric motors (EERE–2017–BT–TP–0047), which is maintained at *http://www.regulations.gov*. This notation indicates that the statement preceding the reference is document number 0024 in the docket for small electric motor and electric motor test procedure rulemaking, and appears at page 7 of that document.

relevant to small electric motors were also raised and are discussed in the following sections.

a. Synchronous Operation

In the July 2017 TP RFI, DOE included a table of motor topologies, categorized by induction or synchronous operation. 82 FR 35468, 35471. In response to the July 2017 TP RFI, Advanced Energy commented that line-start permanent magnet motors are better classified as synchronous motors rather than as induction (or asynchronous) motors. Advanced Energy noted that these motors do not operate on the principle of induction (*i.e.,* production of electric current in a conductor by varying the magnetic field applied to it), and the presence of the squirrel cage is only for starting the motor. (Advanced Energy, No. 25 at p. 3)

DOE agrees that line-start permanent magnet motors are more properly considered synchronous, rather than induction, motors. Line-start permanent magnet motors contain inductive elements, but these elements are used only to start the motor and bring it to synchronous operation. As a result, the inductive portions of the motor are not representative of the motor's operation. As noted earlier, the definition of ''small electric motor'' limits the test procedure's scope to induction motors. Accordingly, line-start permanent magnet motors are best classified as synchronous motors rather than induction motors, and would not fall under the small electric motor definition or be subject to the small electric motor test procedure.

b. Rated Output Power

DOE's regulations provide a method for evaluating small electric motor efficiency. See 10 CFR 431.444. As part of its review of the current test procedures for this equipment, DOE discussed the possibility of revising the output power range for motors considered in the scope of applicability of this test procedure. 82 FR 35468, 35470. As explained in the 2017 TP RFI, only motors with a power rating of greater than or equal to 0.25 horsepower (''hp'') and less than or equal to 3 hp [9] are subject to the regulations in subpart X to 10 CFR part 431. 82 FR 35468, 35470. DOE used the existing scope for small electric motors as a starting point, and reviewed market data to determine whether the limits could be revised. Specifically, DOE discussed considering a lower output power limit of 0.125 hp. *Id.*. In the July 2017 TP RFI, DOE also discussed applying an upper limit of 15 hp for single-phase electric motors and of 5 hp for 2-digit frame size polyphase electric motors. *Id.*.

NEMA opposed changes to the current output power range of regulated motors. (NEMA, No. 24 at p. 6) Advanced Energy commented that 15 hp and 5 hp upper limits for single and polyphase motors in two-digit frames are reasonable. However, Advanced Energy noted that expanding the scope to include motors in the subfractional horsepower range may not lead to significant energy savings. (Advanced Energy, No. 25, at p. 2) The Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison (hereafter referred to as the ''CA IOUs'') commented in support of expanding the scope of small electric motor test procedures to 0.125 hp through 15 hp. The CA IOUs noted that having greater information about the small motor market has many benefits, such as aiding in the development of new utility incentive programs. (CA IOUs, No. 26 at p. 2)

As stated in section III.A, DOE is not proposing to modify the present scope of test procedure applicability; DOE is not proposing to include motors with additional horsepower ratings. If finalized as proposed, the test procedure would continue to apply to small electric motors as pursuant to EPCA. See 10 CFR 431.444.

DOE requests comments on its proposal to maintain the current scope of applicability, with respect to horsepower ratings, of the small electric motors test procedure.

c. Motors Used as a Component of Another Covered Product

Under EPCA, no standard prescribed for small electric motors shall apply to any such motor that is a component of a covered product under section 322(a) of EPCA (42 U.S.C. 6292(a)), or of covered equipment under section 340 (42 U.S.C. 6311). (42 U.S.C. 6317(b)(3). In the July 2017 TP RFI, DOE requested comment on the feasibility of testing motors that are components of other equipment. While not offering comment on testing, NEMA, AHAM and AHRI, McMillan Electric Company, Detech Inc., and Lennox International indicated that they do not support regulating motors as components of covered products or equipment but instead supported a finished-product approach to energy efficiency regulations. (NEMA, No. 24 at p. 1; AHAM and AHRI, No. 21 at p. 2–3; McMillian Electric Company, No. 16 at p. 1; Detech Inc., no. 18 at p. 1; Lennox, No. 22 at p. 1–2) As noted, EPCA directed DOE to establish test procedures and energy conservation standards for small electric motors, except those motors that are a component of a covered product or covered equipment, (42 U.S.C. 6317(b)), and this NOPR, which focuses solely on test procedure issues, does not propose altering the scope of applicability of that procedure or related energy conservation standards.

d. Air-Over Motors

DOE defines the term ''air-over electric motor'' as ''an electric motor rated to operate in and be cooled by the airstream of a fan or blower that is not supplied with the motor and whose primary purpose is providing airflow to an application other than the motor driving it.'' 10 CFR 431.12. In the July 2017 TP RFI, DOE sought comment on defining ''air-over electric motors''—among others—based on physical and technical features of the motor. 82 FR 35468, 35473.

Air-over electric motors do not have a factory-attached fan and require a separate means of convecting air over the frame of the motor. The external cooling keeps internal motor winding temperatures beneath the motor's insulation class' permissible temperature rise or the maximum temperature value specified by the manufacturer. Without external cooling, the air-over electric motor would overheat during continuous operation. Air-over motors can be found in direct-drive axial fans, blowers and several other applications. Single-phase air-over motors are widely used in residential and commercial HVAC systems, appliances, and equipment as well as in agricultural applications.

DOE reviewed catalog offerings of air-over motors to understand the typical configurations available on the market. Air-over motors can be broadly categorized into open air-over and enclosed air-over motors and into polyphase and single-phase motors.

In terms of physical construction, DOE did not find clear differences between air-over motors and non-air-over motors. For example, there is little difference between a totally-enclosed fan-cooled motor (''TEFC'') and a totally-enclosed air-over motor (''TEAO''). In fact, a user could remove the fan on a TEFC motor, and then place the motor in an airstream of the application to obtain an air-over motor configuration. Further, the absence of a fan is not a differentiating feature as with other motor categories, such as totally-enclosed non-ventilated

[9] For certain motor configurations within this range, DOE has not established standards. See 10 CFR 431.446.

(''TENV'') motors, which do not have internal fans or blowers and are similar in construction to TEAO motors.

Based on these observations, DOE initially finds that what differentiates air-over motors from non-air-over motors is that air-over motors require external cooling by a free flow of air to avoid overheating during continuous operation. That is, the internal motor winding temperatures would exceed the maximum temperature value corresponding to the motor's insulation class or specified by the manufacturer. The risk of overheating can be verified by observing whether the motor's temperature keeps rising during a rated load temperature test instead of stabilizing. During a rated load temperature test, the motor is loaded at its rated full load using a dynamometer until it is thermally stable. The current industry standards referenced by the existing DOE small electric motors test procedure each contain a rated load temperature test, wherein thermal stability is defined as the condition where the motor temperature does not change by more than 1 °C over either 30 minutes or 15 minutes, depending on the motor category (See section 5.8.4.4 of IEEE 112–2004 and section 10.3.1.3 of IEEE 114–2010). Further, specifying that external cooling is obtained by a free flow of air would differentiate air-over motors from other totally-enclosed pipe-ventilated motors.

In the July 2017 TP RFI, DOE discussed potentially revising the definition of an air-over electric motor as a motor that does not thermally stabilize without the application of external cooling by a free flow of air during a rated temperature test according to either IEEE 112–2004, CSA C747–09, or CSA C390–10 for polyphase motors or IEEE 114–2010 or CSA C747–09 for single-phase motors.'' 82 FR 35468, 35472–35473.

NEMA and Advanced Energy asserted that it would be extremely difficult or impossible to identify air-over motors by physical and technical features alone. (NEMA, No. 24 at p. 6; Advanced Energy, No. 25 at p. 4) Advanced Energy stated that air-over motors could be defined by their inability to achieve a stable temperature under standard test conditions. (Advanced Energy, No. 25 at p. 4) Advanced Energy suggested that the term ''rated temperature test'' be replaced by ''rated load temperature test,'' and emphasized the need to specify that the external cooling air comes from a source that is not mechanically attached to the motor. Advanced Energy suggested that air-over motors be defined as ''a motor that does not reach thermal equilibrium (or thermal stability) during a rated load temperature test according to test standards incorporated by reference, without the application of forced cooling by a free flow of air from an external device not mechanically connected to the motor.'' (Advanced Energy, No. 25 at pp. 4–5) Advanced Energy further added that the term ''thermal equilibrium'' in its recommended air-over motor definition is defined in the referenced test standards, but that DOE could consider adding a definition for that term as part of the air-over motor definition. (Advanced Energy, No. 25 at p. 5) Finally, Lennox commented that air-over motors are already defined at 10 CFR 431.12, and did not see a need to make changes to this definition. (Lennox, No. 22, at p. 4)

As stated in section III.A of this NOPR, DOE is not proposing to modify the scope of applicability of the current test procedures for small electric motors and electric motors. The definition of air-over electric motors implicates equipment beyond those electric and small electric motors DOE already regulates under subpart B of 10 CFR part 431. As a result, DOE is not proposing to amend the definition at this time.

2. Scope of the Small Electric Motor Test Procedure

In the March 2010 ECS final rule, DOE identified motor topologies that met the small electric motor definition. DOE reviewed the topologies of alternating-current single-speed induction motors, identifying six in total: Split-phase, shaded-pole, capacitor-start induction-run (''CSIR''), capacitor-start capacitor-run (''CSCR''), permanent-split capacitor (''PSC''), and polyphase (see descriptions in Table III–1). 75 FR 10874, 10882.

TABLE III–1—ALTERNATING CURRENT, SINGLE-SPEED, INDUCTION MOTOR TOPOLOGIES

Topology	Description
Permanent-Split Capacitor	A capacitor motor* having the same value of capacitance for both starting and running conditions. (MG 1–2014, 1.20.3.3.2).
Capacitor-Start Induction-Run	A capacitor motor* in which the capacitor phase is in the circuit only during the starting period. (MG 1–2014, 1.20.3.3.1).
Capacitor-Start Capacitor-Run	A capacitor motor* using different values of effective capacitance for the starting and running conditions. (MG 1–2014, 1.20.3.3.3).
Shaded-Pole	A single-phase induction motor provided with an auxiliary short-circuited winding or windings displaced in magnetic position from the main winding. (MG 1–2014, 1.20.3.4).
Split-phase	A single-phase induction motor equipped with an auxiliary winding, displaced in magnetic position from, and connected in parallel with the main winding. (MG 1–2014, 1.20.3.1).
Polyphase induction, squirrel cage	A polyphase induction motor in which the secondary circuit (squirrel-cage winding) consists of a number of conducting bars having their extremities connected by metal rings or plates at each end. (MG 1–2014, 1.18.1.1).

*A capacitor motor is a single-phase induction motor with a main winding arranged for direct connection to a source of power and an auxiliary winding connected in series with a capacitor. (MG 1–2014 1.20.3.3).

Of these six topologies, DOE concluded that three would satisfy the small electric motor definition: CSIR, CSCR, and certain polyphase motors. *Id.* Therefore, DOE added subpart X of 10 CFR part 431 to address energy conservation standards and test procedures regarding these three topologies that meet the definition of a small electric motor.

DOE received a number of comments related to the test procedure's scope in response to the July 2017 TP RFI. Many of these comments addressed whether the test procedure should be expanded to apply to additional motors. Parties commenting on the test procedure's scope are listed in Table III–2:

TABLE III–2—PARTIES COMMENTING ON THE TEST PROCEDURE'S SCOPE

Party	Affiliation
Advanced Energy	Laboratory.
AHAM and AHRI (Association of Home Appliance Manufacturers and Air-conditioning, Heating, and Refrigeration Institute).	Trade Association—Manufacturer.
Anonymous Commenters (7 total)	Anonymous.
APSP (Association of Pool and Spa Professionals)	Trade Association—Manufacturer.
CA IOUs (Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, Southern California Edison).	Utility.
CEC (California Energy Commission)	State Government.
Detech Inc. (Detector Technology Inc.)	Manufacturer.
EEI (Edison Electric Institute)	Association—Utility.
Gent University	University.
Joint Advocates (American Council for an Energy-efficient Economy, Appliance Standards Awareness Project, Northwest Power and Conservation Council, Northwest Energy Efficiency Alliance).	Efficiency Advocate.
Lennox (Lennox International Inc.)	Manufacturer.
McMillan Electric Company	Manufacturer.
NEMA (National Electrical Manufacturers Association)	Trade Association—Manufacturer.
Raymond Calore	Individual.

As stated, DOE is not proposing to modify the test procedure's scope; instead, the test procedure would continue to apply only to small electric motors that are currently subject to the DOE's existing test procedure at 10 CFR 431.444.

3. Scope of the Electric Motor Test Procedure

As noted, this NOPR also addresses the test procedure for electric motors in response to a petition for rulemaking. The current electric motor test procedure is at subpart B of 10 CFR part 431. DOE is not proposing any changes to the scope of applicability of the electric motor test procedure.

B. Metric for Small Electric Motors

DOE's existing test procedure for small electric motors requires that motor efficiency of this equipment be determined using the average full-load efficiency of the small electric motor's basic model. 10 CFR 431.445(b)(1). This formulation of efficiency represents the mechanical output power at full-load (*i.e.,* the rated output power) divided by the electrical input power, and is expressed as a percentage. DOE further requires manufacturers to test at least five units of a basic model to determine the limit on represented value of average full-load efficiency by applying the equations at 10 CFR 431.445(c)(3). See 10 CFR 431.445(c)(2).

1. Average and Nominal Efficiency

In response to the July 2017 TP RFI, NEMA and Advanced Energy suggested that DOE's test procedure use the NEMA nominal, rather than average, full load efficiency metric for small electric motors.[10] (NEMA, No. 24 at p. 8; Advanced Energy, No. 25 at p. 9) NEMA stated that the NEMA nominal full load efficiency metric is established in the industry and is harmonized with global IEC standards. NEMA asserted that the difference between the metrics used for electric motor standards and small electric motor standards causes confusion in the industry. (NEMA, No. 24 at p. 8) Advanced Energy stated that if DOE decided to use the NEMA nominal efficiency metric for small electric motors, DOE would need to ensure that the translation from average efficiencies to nominal efficiencies would not change the stringency of existing energy conservation standards. (Advanced Energy, No. 25 at p. 8)

The nominal efficiency values for electric motors are based on a sequence of discretized standard values in NEMA Standard MG 1–2016 Table 12–10, and are familiar to motor users. Under this approach, the full-load efficiency is identified on the electric motor nameplate by a nominal efficiency selected from Table 12–10 that shall not be greater than the average efficiency of a large population of motors of the same design. However, NEMA has not adopted a comparable set of standardized values for small electric motors. Because no standardized nominal values are published for small electric motors, DOE is unable to consider at this time their appropriateness as a small electric motors performance metric. Absent standardized nominal values for small electric motors, DOE is unable to ascertain whether existing energy conservation standards would require the same level of stringency if based on nominal values. As a result, this NOPR does not propose to adopt NEMA's suggestion to amend the metric for small electric motor energy conservation standards (*i.e.,* average full-load efficiency).

2. Representations

In response to the July 2017 TP RFI, AHAM and AHRI commented that if DOE elects to expand the scope of the small electric motors and electric motors test procedures, DOE should not make these newly expanded test procedures mandatory, including for representations, until or unless energy conservation standards are established. (AHAM and AHRI, No. 21 at p. 4)

As discussed in section III.A of this NOPR, DOE is not proposing to expand the scope of applicability of the small electric motors test procedure.

C. Industry Standards for Existing Test Procedures

The DOE test procedures rely on industry standards that are incorporated by reference at 10 CFR 431.443 and 10 CFR 431.15. Specifically, the existing DOE test procedures for small electric motors and electric motors rely on the following test methods:

(1) For polyphase small electric motors of less than or equal to 1 hp, either Section 6.3 ''Efficiency Test Method A, Input-Output'' of IEEE 112–2004, ''IEEE Standard Test Procedure for Polyphase Induction Motors and Generators;'' or CSA C747–09, ''Energy Efficiency Test Methods for Small Motors'' (10 CFR 431.444(b)(2));

(2) For polyphase small electric motors of greater than 1 hp and electric motors, either Section 6.4 ''Efficiency Test Method B, Input-Output with Loss Segregation'' of IEEE 112–2004; or CSA C390–10, ''Test Methods, Marking Requirements, and Energy Efficiency

[10] Currently, small electric motor efficiency is based on *average* full load efficiency while electric motor efficiency is based on *nominal* full load efficiency.

Levels for Three-Phase Induction Motors'' (10 CFR 431.444(b)(3); 10 CFR 431.16 and Appendix B); and

(3) For single-phase small electric motors: either IEEE 114–2010, ''IEEE Standard Test Procedure for Single-Phase Induction Motors;'' or CSA C747–09 (10 CFR 431.444(b)(1)).

In response to the July 2017 TP RFI, Advanced Energy commented generally that the existing test procedures for small electric motors do not require any revisions. (Advanced Energy, No. 25 at p. 9) Comments suggesting revisions to specific aspects of the current test procedure (*e.g.,* scope, metric, and incorporation of new test methods) are discussed elsewhere in this document (see sections III.A.2, III.B, and III.C.2).

DOE conducted a review of each of the referenced industry standards to determine whether they still represent the most current procedures accepted and used by industry. After the July 2017 TP RFI comment period closed (September 13, 2017), IEEE approved an updated edition of the IEEE 112 standard on February 14, 2018. Section III.C.1 of this document describes DOE's consideration of the updated IEEE 112–2017 standard. The other referenced industry standards incorporated into DOE's test procedure developed by CSA remain current or have been reaffirmed without changes.[11] All of these standards remain among the most commonly used industry consensus standards for determining motor efficiency. Therefore, as explained later in this section, in recognition of the wide acceptance of these testing standards, DOE proposes to modify 10 CFR 431.15 and 431.443 by incorporating by reference the latest version of IEEE 112, while retaining the incorporation by reference of the IEEE 112–2004 standard. In addition, section III.C.2 of this document addresses DOE's consideration of incorporating by reference an additional industry standard also commonly used by the industry.

Table III–3 summarizes the industry standards DOE proposes to incorporate by reference to use as the basis for measuring motor efficiency of currently regulated small electric motors and electric motors. The specific industry standards that would be referenced are listed in section IV.N of this document.

TABLE III–3—SUMMARY OF THE PROPOSED INDUSTRY TEST METHODS

Equipment	Description	Industry test methods
Small Electric Motors	Single-phase	• IEEE 114–2010.* • CSA C747–09.* • IEC 60034–2–1:2014 Test Method 2–1–1A.
	Polyphase with rated output power less or equal to 1 hp.	• IEEE 112–2004 Test Method A.* • IEEE 112–2017 Test Method A. • CSA C747–09.* • IEC 60034–2–1:2014 Test Method 2–1–1A.
	Polyphase with rated output power greater than 1 hp.	• IEEE 112–2004 Test Method B.* • IEEE 112–2017 Test Method B. • CSA C390–10.* • IEC 60034–2–1:2014 Test Method 2–1–1B.
Electric Motors	Electric Motors—regulated at 10 CFR 431.25	• IEEE 112–2004 Test Method B.* • IEEE 112–2017 Test Method B. • CSA C390–10.* • IEC 60034–2–1:2014 Test Method 2–1–1B.

* These IEEE and CSA standards are already incorporated by reference in the current test procedure and would be maintained as part of this proposal.

1. IEEE 112–2017

On February 14, 2018, IEEE approved IEEE 112–2017, ''IEEE Standard Test Procedure for Polyphase Induction Motors and Generators.'' DOE conducted a full review of the revised standard to identify any changes made relative to the industry test methods that are incorporated by reference from IEEE 112–2004.

Section 4, ''Measurements'', of IEEE 112–2017 includes several updates regarding instrument selection and measurement accuracy. Specifically, the 2017 revision includes updates to the permissible limits of error for general measurement instrumentation, the limits of error for torque measurement, and the limits of error for speed measurement. In addition, the 2017 revision specifies new requirements for limits of error in current measurement, power measurement, and frequency measurement. Section 4 also indicates that alcohol thermometers are no longer permitted for measuring temperature in the 2017 revision of IEEE 112.

The method for calculating core loss used in Section 6.4, ''Efficiency test method B—Input-output with loss segregation'' was revised for the 2017 edition of IEEE 112. Core loss at each load point is now determined directly based on the no-load test data at the stator core voltage instead of being calculated by subtracting friction, windage, and resistive core losses from total no-load losses. This change in calculation methodology for core losses aligns the IEEE 112–2017 Test Method B with the efficiency test method specified in CSA C390–10, currently incorporated by reference at 10 CFR 431.444(b)(3). DOE further notes that this change also aligns with the Method 2–1–1B approach of IEC 60034–2–1:2014.

Previously, when DOE added CSA 390–10 as a permissible test method for small electric motors, DOE concluded that the differences between IEEE 112–2004 and CSA 390–10 are minimal, and both tests will result in an accurate and similar measurement of efficiency. 77 FR 26608, 26622. IEEE 112–2017 uses the same core-loss calculation as CSA C390–10. However, DOE has initially determined that the core-loss calculation in IEEE 112–2017 may result in a difference in the measured efficiency value as compared to the core-loss calculation under the currently referenced IEEE 112–2004. In the small electric motor and electric motor final rule published on May 4, 2012, commenters indicated the difference in efficiency outcome between IEEE 112–2004 and CSA C390–10 to be within 0.2

[11] Both CSA C747–09 and CSA C390–10 have been reaffirmed in 2014 and 2015, respectively.

percent. 77 FR 26608, 26622. As discussed, the core loss calculation in IEEE 112–2017 aligns with the core loss calculation in CSA C390–10. Based on this comparison of IEEE 112–2004 and CSA C390–10, the impact of the core-loss calculation between IEEE 112–2004 and IEEE 112–2017 should be no greater than 0.2 percent. To avoid any potential need to retest motors that have relied on IEEE 112–2004 for purposes of compliance, DOE is proposing to incorporate the IEEE 112–2017 test methods as alternatives to the test methods incorporated in the current test procedure, while retaining the currently incorporated IEEE 112–2004 methods. DOE has initially determined that IEEE 112–2017 will result in an accurate and similar measurement of efficiency as compared to IEEE 112–2004. Given the variable nature of tested efficiency values for electric motors and small electric motors due to manufacturing and material differences, the variation in the calculated efficiency is not likely to result in any significant change in overall energy efficiency test results.

Since the introduction of the IEEE 112 standard in 1964, IEEE has made periodic updates to the standard to keep the test methods current with improvements to instrumentation and test techniques, and incorporating this update would help to align DOE's test procedures with current industry practice. Accordingly, DOE proposes to incorporate by reference IEEE 112–2017 Test Method A and Test Method B as alternatives to the industry test methods that are currently incorporated by reference from IEEE 112–2004 (see 10 CFR 431.15 and 10 CFR 431.443). This proposal would further harmonize the permitted test methods under subparts X (for small electric motors) and B (for electric motors) of 10 CFR part 431 and align measurement and instrumentation requirements with industry practice, while ensuring that motors that have demonstrated compliance under IEEE 112–2004 methods do not require retesting.

DOE requests comment on its proposal to incorporate by reference IEEE 112–2017 Test Method A and Test Method B as alternatives to the currently incorporated industry test standards in IEEE 112–2004. In particular, DOE requests data comparing test results of these standards

2. IEC 60034–2–1:2014

Separate from DOE's July 2017 TP RFI, NEMA and Underwriter Laboratories (''UL'') independently submitted written petitions requesting that certain portions of IEC 60034–2–1:2014 be adopted as a permitted alternative test method for small electric motors and electric motors. DOE published a notice regarding its receipt of these petitions in November 2017. See 82 FR 50844 (November 2, 2017) (hereinafter, ''the November 2017 notice of petition'') (announcing the receipt of petitions from UL and NEMA seeking the incorporation of certain test methods from IEC 60034–2–1:2014 into DOE's regulations).

Specifically, NEMA's petition requested that DOE incorporate IEC 60034–2–1:2014 Method 2–1–1B [12] as an alternative to IEEE 112–2004 Test Method B and CSA C390–10, which are currently referenced in Appendix B. (NEMA, No. 28.2 at p.1) UL requested that (1) IEC 60034–2–1:2014 test method 2–1–1B be approved for Appendix B and section 431.444 of 10 CFR part 431 (as an alternative to CSA C390–10) and (2) that IEC 60034–2–1:2014 test method 2–1–1A be approved for section 431.444 of 10 CFR part 431 (as an alternative to CSA C747–09). (UL, No. 29.1 at p.1)

The NEMA and UL petitions included and referenced papers that compare the testing methodologies presented in IEC 60034–2–1:2014 and the IEEE and CSA standards currently referenced in the small electric motors and electric motors test procedures at 10 CFR part 431.

The NEMA petition included a ''work paper'' that summarizes an evaluation conducted by the NEMA Motor and Generator Section technical committee, which found that the IEC 60034–2–1:2014 Method 2–1–1B test method was a suitable alternative to the IEEE 112–2004 Test Method B and CSA C390–10 test methods. (NEMA, No. 28.3 at p. 1) This evaluation relied on (1) comparison of instrumentation accuracy, test method, and calculation approach among the IEC, IEEE, and CSA industry standards, (2) analysis of test results from over 500 motors tested at the Hydro-Quebec Research Institute, and (3) reference to one scientific research paper (the ''Angers et al. paper'') which also concluded that all three methods provide results that are very closely aligned. (NEMA, No. 28.3 at pp. 1–3) NEMA's work paper claimed that the results of the Hydro-Quebec Research Institute testing typically showed a loss deviation of less than ±2 percent. The NEMA petition letter also stated a loss difference of 2 percent is (1) within the variation of two tests performed using the same motor and test equipment but with different operators and at different times of day; and (2) well below the typical variation of 10 percent of losses when different labs are used to test the same motor. (NEMA, No. 28.3 at p. 2) NEMA commented that incorporating IEC 60034–2–1:2014 Method 2–1–1B test method as an alternative to the IEEE 112–2004 Test Method B and CSA C390–10 test methods would reduce the unnecessary burden of performing a second test for motors originally tested to the IEC 60034–2–1:2014 Method 2–1–1B test method. (NEMA, No. 28.3 at pp. 3–4) NEMA did not specify the number of motors that would benefit from such burden reduction.

The UL petition included two papers comparing the IEC 60034–2–1 test methods with the respective IEEE and CSA standards. The first paper was the Angers et. al. study, that concluded that the IEC 60034–2–1:2014 Method 2–1–1B test method provides results that are very closely aligned with the IEEE 112–2004 Test Method B and CSA C390–10 test methods. (UL, No 29.2 at pp. 1–8) The second paper, written by IEEE member Wenping Cao, compared the IEEE 112 and IEC 60034–2–1 standards. The study evaluated test results from six induction motors with ratings between 5.5 and 150 kW (7.5 to 200 hp) and determined that the overall power losses found using the two standards is similar. The resulting efficiency values were found to be equal or otherwise closely aligned, with respective maximum and mean deviations of 0.1 and 0.03 percentage points. (UL, No. 29.3 at p. 7) UL requested that DOE incorporate IEC 60034–2–1:2014 Method 2–1–1B as an alternative to IEEE 112–2004 Test Method B and CSA C390–10 because of an increased use of the IEC 60034–2–1:2014 Method 2–1–1B. (UL, No 29.1 at p.1) In its comments, UL did not quantify how broadly the IEC 60034–2–1:2014 Method 2–1–1B is currently being used.

Comments in response to the November 2017 notice of petition are discussed in sections III.C.2.a through III.C.2.b of this notice of proposed rulemaking.

DOE also received several anonymous comments in response to the November 2017 notice of petition. Those comments, however, raised topics unrelated to the test procedures at issue and are, consequently, not addressed.

a. Method 2–1–1A

Among multiple testing methods provided in IEC 60034–2–1:2014, Method 2–1–1A ''Direct measurement of input and output'' is the standard's preferred testing method for single-

[12] IEC 60034–2–1:2014 Method 2–1–1B (2014), ''Rotating Electrical Machines—Part 2–1: Standard methods for determining losses and efficiency from tests (excluding machines for traction vehicles),'' ''Summation of losses, additional load losses according to the method of residual loss.''

phase motors. It is based on direct measurement of electrical input power to the motor and mechanical output power (in the form of torque and speed) from the motor. This approach is analogous to the methods of the other industry standards, IEEE 114–2010 and CSA C747–09, currently incorporated by reference for testing single-phase motors, and IEEE 112–2004 Test Method A, currently incorporated by reference for the purpose of testing polyphase motors of output power less than or equal to one horsepower.

Regarding equivalency among IEC 60034–2–1:2014 Method 2–1–1A, IEEE 114–2010, and CSA C749–09, Advanced Energy commented that previous comparisons finding equivalence between the latter two still held, but that Method 2–1–1A had not been formally compared to the others through testing. (Advanced Energy, No. 81 at p. 4 that IEC 60034–2–1:2014 Method 2–1–1A is likely to produce results that are accurate, reproducible, and consistent with results from the other test methods permitted under subparts X and B of 10 CFR part 431.

To identify ways to resolve the concern surrounding the torque correction procedure in IEC 60034–2–1:2014 Method 2–1–1A, DOE reviewed analogous provisions in other industry standards. IEEE 114–2010 [13] and CSA C747–09 [14] contain more detailed descriptions of torque correction procedures, but both state that torque correction is not required when torque is measured using either an inline, rotating torque transducer or stator reaction torque transducer. The insufficient specificity of IEC 60034–2–1:2014 Method 2–1–1A regarding dynamometer torque correction can be avoided by using a torque measurement method that does not require correction. As a result, DOE proposes to incorporate by reference the provisions of IEC 60034–2–1:2014 Method 2–1–1A as a permitted alternative to IEEE 114–2010 and CSA C747–09, but to limit torque measurement to methods which do not require dynamometer torque correction. Specifically, DOE proposes to limit torque measurement, when using IEC 60034–2–1:2014 Method 2–1–1A, to either in-line, shaft-coupled, rotating torque transducers or stationary, stator reaction torque transducers, and to reflect these changes in 10 CFR 431.444(b)(1) and 431.444(b)(2).

In addition, the IEC 60034–2–1:2014 2–1–1A test method specifies that motors under test should be operated at the ''required load'' until thermal equilibrium is achieved. As required under DOE's test procedure, the motor must be rated and tested at rated load. For clarity and consistency, DOE proposes to modify these instructions by replacing the term ''required load'' with ''rated load.''

DOE tentatively agrees with NEMA and Advanced Energy that IEC 60034–2–1:2014 Method 2–1–1A is likely to produce accurate and reproducible results that are consistent with results from the other test methods permitted under subparts X and B of 10 CFR part 431. In light of this likely outcome, DOE proposes to incorporate by reference IEC 60034–2–1:2014 Method 2–1–1A as an alternative to currently incorporated industry testing standards IEEE 112–2004 Test Method A and CSA C747–09 in 10 CFR 431.433. This proposal would further harmonize DOE's test procedures with current industry practice and reduce manufacturer test burden (see section III.F.1 for more details).

DOE requests comment on its proposal to incorporate by reference IEC 60034–2–1:2014 Method 2–1–1A as an alternative to currently incorporated industry testing standards IEEE 112–2004 Test Method A and CSA C747–09. In particular, DOE requests data comparing the average full-load efficiency test results of those standards. DOE requests comments on its proposal to limit torque measurement, when using IEC 60034–2–1:2014 Method 2–1–1A, to either in-line, shaft-coupled, rotating torque transducers or stationary, stator reaction torque transducers.

b. Method 2–1–1B

Among multiple testing methods provided in IEC 60034–2–1:2014, Method 2–1–1B ''Summation of losses, additional load losses according to the method of residual loss'' is the IEC 60034–2–1:2014 standard's preferred testing method for three-phase motors. It is based on the indirect calculation of motor losses using a combination of measured values (*e.g.,* winding resistance) and assumptions so that direct measurement of motor torque is not needed. This is analogous to the methods of the other industry standards, IEEE 112–2004 and CSA C390–10, currently incorporated by reference for testing polyphase motors of output power greater than one horsepower.

In response to the November 2017 notice of petition, NEMA encouraged DOE to recognize IEC 60034–2–1:2014 as valid for demonstrating compliance with the DOE energy conservation standards. (NEMA, No. 80 at p. 1) Advanced Energy commented that, of its analysis of 117 motors, 112 were found to have full-load efficiency differences of ±0.2 or fewer percentage points between their respective IEC 60034–2–1:2014-measured and IEEE 112 Test Method B-measured efficiency values. (Advanced Energy, No. 81 at p. 2) Advanced Energy commented that, although the comparison was performed using IEC 60034–2–1:2007, the 2014 version is similar enough that results should continue to hold.[15] (Advanced Energy, No. 81 at p. 5) On that basis, Advanced Energy considered the loss segregation methods of IEC 60034–2–1:2014 and IEEE 112–2004 Test Method B to be in close agreement with each other. (Advanced Energy, No. 81 at p. 2)

Advanced Energy also generally supported the assessments of variation between IEC 60034–2–1 and IEEE 112–2004 Test Method B:

- Regarding UL's claim that IEEE 112–2004 Test Method B/IEC 60034–2–1:2014 Method 2–1–1B alignment is less than 0.1 percentage points, Advanced Energy commented that motors of lower rated output power, especially, sometimes varied by more. (Advanced Energy, No. 81 at p. 5)
- Regarding differences in IEEE 112–2004 Test Method B/IEC 60034–2–1:2014 Method 2–1–1B alignment across motors with respective energy conservation standards at Subparts B and X of 10 CFR part 431, Advanced Energy commented that the results of its analysis would hold for motors of both subparts, but that error may grow as motor output power falls. (Advanced Energy, No. 81 at p. 4)
- Regarding a Hydro-Quebec study finding a characteristic loss estimation difference of ±2 percent of losses between IEEE 112–2004 Test Method B and IEC 60034–2–1, Advanced Energy commented that this result approximately aligned with its own. (Advanced Energy, No. 81 at p. 5)
- Advanced Energy also commented that although the core loss estimation method varied somewhat between IEEE 112–2004 Test Method B, IEC 60034–2–1:2014, and CSA C390–10, the difference was modest and, further, that a 2018 update of IEEE 112 was expected to eliminate it. (Advanced Energy, No. 81 at pp. 3–4)

In addition to the studies submitted by the stakeholders, DOE notes that a recent comparison of results from a round robin between 11 participants

[13] Section 5.2.1.1.1 of IEEE 114–2010 addressees when torque correction is required.

[14] Section 6.7.1 of CSA C747–09 addresses when torque correction is required.

[15] Advanced Energy's study published in 2011, before the 2014 version of IEC 60034–2–1 was available, but Advanced Energy expects the conclusion to extend to 2014.

concluded that the same motor tested at multiple locations showed a maximum deviation of ±0.4 percentage points, using the same IEEE 112–2004 Test Method B for each test.[16] DOE further notes that the largest difference reported by stakeholders between measured efficiency values using IEC 60034–2–1:2014 and IEEE 112–2004 Test Method B did not exceed ±0.2 percentage points. (Advanced Energy, No. 81 at p. 2). This difference is comparable to the difference in efficiency observed when testing using CSA 390–10 and IEEE 112–2004 Test Method B. DOE also determined that given the variable nature of tested efficiency values for electric motors and small electric motors due to manufacturing and material differences, the variation in the calculated efficiency is not likely to result in any significant change in overall energy efficiency test results.

Regarding variance in the core loss calculation between IEEE 112 Test Method B and IEC 60034–2–1:2014 Method 2–1–1B, the proposed incorporation by reference of the updated IEEE 112–2017 test methods is expected to resolve this discrepancy and further reduce differences in test results between the IEEE 112–2017 Test Method B and IEC 60034–2–1:2014 Method 2–1–1B. See section III.C.1 for details on this aspect of DOE's proposal.

When amending a test procedure, DOE must determine the extent to which a proposed procedure will alter the measured energy efficiency of a given type of covered equipment when compared to the current procedure. (See 42 U.S.C. 6314(a)(5)(C) (incorporating the procedural steps of 42 U.S.C. 6293(e) for electric motors)) In view of the comments regarding the comparison among IEEE 112–2004 Test Method B, CSA 390–10, and IEC 60034–2–1:2014 Method 2–1–1B, including the results of the Hydro Quebec study, the paper written by IEEE member Wenping Cao, and the Advanced Energy study, along with the additional information gathered by DOE, DOE initially concludes that (1) these methods are not identical, but the differences between these standards are within the expected measurement variation of the existing test procedure; (2) all three tests would result in measurements of efficiency that would yield the same results with respect to motor compliance; and (3) given the variable nature of tested efficiency values for electric motors and small electric motors due to manufacturing and material differences, the variation in the calculated efficiency is insignificant and not likely to result in any manipulation of energy efficiency test results. Therefore, DOE proposes to incorporate by reference the relevant provisions of IEC 60034–2–1:2014 Method 2–1–1B as a permitted alternative to the current test methods IEEE 112–2004 Test Method B and CSA C390–10 in 10 CFR 431.15 and 10 CFR 431.443. Allowing manufacturers to test according to IEC 60034–2–1:2014 Method 2–1–1B would further harmonize DOE's test procedures with current industry practice and reduce manufacturer test burden (see section III.F.1 for more details).

DOE requests comment on its proposal to incorporate by reference IEC 60034–2–1:2014 Method 2–1–1B as an alternative to the currently incorporated industry testing standards IEEE 112–2004 Test Method B and CSA C390–10 and to IEEE 112–2017 Test Method B. In particular, DOE requests data comparing test results of those standards.

D. Rated Output Power of Small Electric Motors

1. Background

The current regulations for small electric motors specify that the metric for energy conservation standards, average full-load efficiency, is to be measured at ''full rated load.'' 10 CFR 431.442. However, the industry testing standards discussed in section III.C do not provide a method to determine the rated load of the tested unit. Rather, the standards rely on a manufacturer-specified output power, which is typically listed on a motor's nameplate. Motors subject to the test procedures for small electric motors are capable of operating over a continuous range of loads. For example, a motor that is rated at 1 hp is also capable of delivering 0.75 hp, but likely with a different speed, torque, and efficiency than those of when it is delivering its rated load of 1 hp. The output power of the motor depends on the load and the design of the motor. Therefore, the load point at which the motor must be tested is not an intrinsic parameter to the motor, but rather a parameter that must be defined or specified. The test's load point is relevant to efficiency testing because the efficiency of small electric motors varies according to load.

To provide for more accurate comparisons of similar motors from different manufacturers, DOE considered specifying objective rating points. However, DOE recognizes that in some instances it may be more appropriate to allow manufacturers to rate and test their equipment at a selected load point within an allowable range that reflects a manufacturer preference (*e.g.,* a nominal value, increasing the service factor, or the load resulting in the highest efficiency) and that more appropriately matches the operating conditions likely to be experienced by operators of small electric motors.

In the July 2017 TP RFI, DOE described potential methods of determining motor output power based on factors other than manufacturer declaration, including deriving motor output power from either breakdown torque or service factor load. 82 FR 35468, 35476–77.

Details of the options considered and the proposed approach are discussed in sections III.D.2 and III.D.3 of this document.

2. NEMA Breakdown Torque Method

DOE investigated whether breakdown torque (a directly measurable quantity) corresponds to rated output power, and if it could be used as a means for determining rated output power. NEMA MG 1–2016, section 10.34, specifies that the horsepower rating of a small or medium single-phase induction motor is based on breakdown torque. Breakdown torque is defined in section 1.50 of NEMA MG 1–2016 as the maximum torque which the motor will develop with rated voltage and frequency applied without an abrupt drop in speed.[17] In concept, breakdown torque describes the maximum torque the motor can develop without slowing down and stalling. The maximum torque over the entire speed range could occur at a different condition (*e.g.,* the motor start-up, zero speed condition) than the breakdown condition. Therefore, breakdown torque corresponds to a local maximum torque (on a plot of torque versus speed) that is nearest to the rated torque. The phrase ''abrupt drop in speed'' corresponds to the expectation that the motor will slow down or stall if the load increases and indicates that minor reductions in speed observed due to measurement sensitivities are not considered.

The breakdown torque for a specific horsepower rating is specified as a range as a function of input frequency and synchronous speed of the motor in two tables: Table 10–5 of NEMA MG 1–2016, which applies to induction motors, except PSC and shaded-pole motors; and Table 10–6 of NEMA MG 1–2016, which applies to shaded-pole and PSC

[16] Hydro-Quebec Research Institute, NEMA Motor Round Robin, November 2018. Motor Summit 2018 Proceedings. Available at *https://www.motorsummit.ch/sites/default/files/2018-11/MS18_proceedings.pdf*.

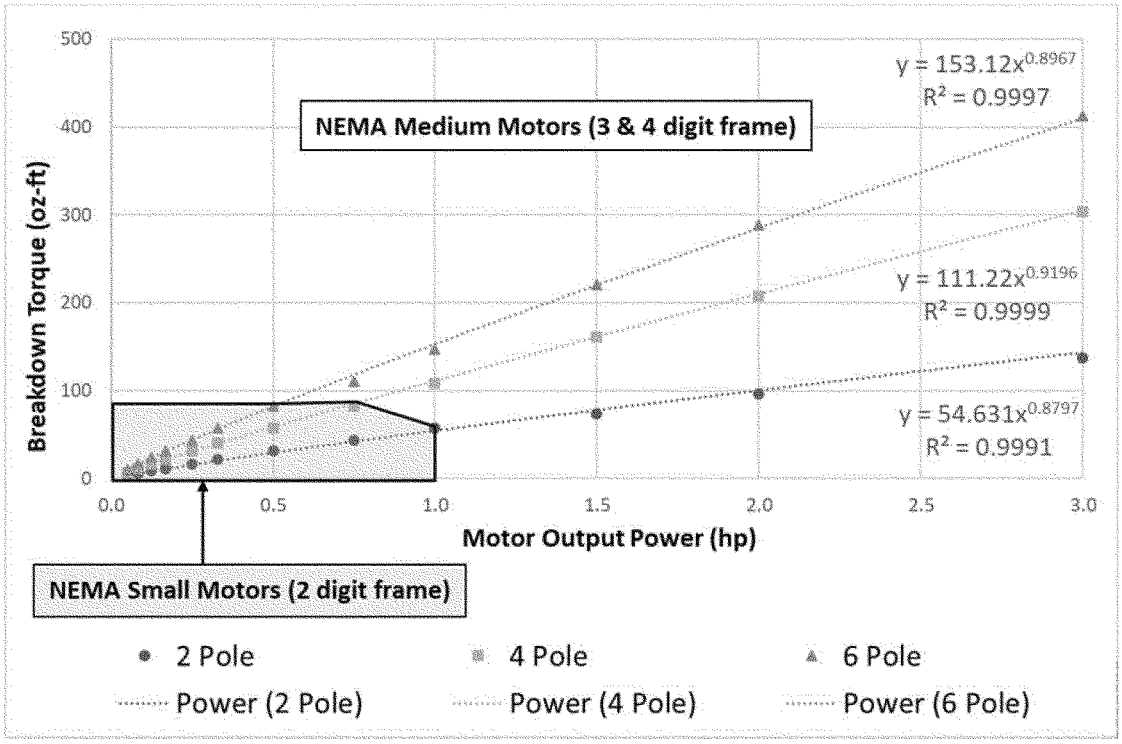
[17] NEMA MG 1–2016 does not quantify what would constitute ''an abrupt drop in speed.''

motors for fan and pump applications. For polyphase motors, section 12.37 of NEMA MG 1–2016 specifies that the breakdown torque of a general-purpose polyphase squirrel-cage small motor shall not be less than 140 percent of the breakdown torque of a single-phase general purpose motor of the same horsepower and speed rating. As an example, according to Table 10–5 of NEMA MG 1–2016, a 60 hertz (''Hz'') [18] motor rated for 1 hp with a synchronous speed of 1,800 revolutions per minute (''RPM'') must have a breakdown torque between 5.16 and 6.8 pound-feet.

Not all small electric motors subject to standards are directly addressed by NEMA MG 1–2016. The highest horsepower rating for small motors for which breakdown torque is provided in NEMA MG 1–2016 Table 10–5 is 1 hp for 2-pole motors, 0.75 hp for 4-pole motors, and 0.5 hp for 6-pole motors. Table 10–5 provides breakdown torque values for motors with horsepower ratings greater than these values, but specifies that these ratings correspond to 3-digit frame number series ''medium motors'' rather than 2-digit number series ''small motors.'' The energy conservation standards for small electric motors at 10 CFR 431.446 apply only to motors with a two-digit frame number series. However, the upper output power bound of energy conservation standards for single-phase small electric motors is 3 hp for 2- and 4-pole motors, and 1.5 hp for 6-pole motors. The upper output power bound of energy conservation standards for polyphase small electric motors is 3 hp for 2-pole motors, 2 hp for 4-pole motors, and 1 hp for 6-pole motors.

DOE investigated the possibility of applying the breakdown torque ranges associated with NEMA medium motors in Table 10–5 of NEMA MG 1–2016 to small electric motors not identified as small motors in NEMA MG 1–2016.[19] DOE converted the breakdown torque values in NEMA MG 1–2016 Table 10–5 to units of oz-ft and plotted the upper limits of the breakdown torque range versus horsepower for NEMA small and medium motors up to 3 hp for 2-, 4-, and 6-pole motors operating at 60 Hz. DOE found that the relationship between breakdown torque and horsepower can be expressed as a power law, with continuity across the horsepower ratings at the transition point from motors designated by NEMA MG 1–2016 as ''small'' versus ''medium''. This continuity indicates that the breakdown torque to horsepower relationship for motors designated ''medium'' is no different than those motors designated ''small.'' DOE tentatively concludes from this review that the portions of NEMA MG 1–2016 Table 10–5 corresponding to ''medium'' motors, as that term is applied in the context of NEMA MG 1–2016, can be applied to 2-digit frame number series small electric motors of the same horsepower, and which are subject to DOE's test procedure. Figure III–1 shows breakdown torque plotted against horsepower, with power law relationships fitted to the data from NEMA MG 1–2016 Table 10–5.

Figure III-1: Breakdown Torque of Induction Motors



In response to the July 2017 TP RFI, NEMA commented that single-phase small electric motors are typically rated based on breakdown torque per NEMA MG 1 limits. (NEMA, No. 25 at p. 11–12) To confirm that the breakdown torque method is commonly used by industry, DOE compared the values of breakdown torque specified in Table

[18] Hertz is a unit of measure of frequency—or the rate at which current cycles. One hertz equals one cycle per second.

[19] These include small electric motors with horsepower ratings greater than the ratings provided in NEMA MG 1–2016 Table 10–5 for NEMA small motors and less than or equal to the upper horsepower bound for regulated small electric motors,

10–5 of NEMA MG 1–2016 to values listed in manufacturer catalogs and product literature for small electric motors. For most single-phase small electric motors, breakdown torque corresponded to the associated NEMA range in Table 10–5 of NEMA MG 1–2016.[20] Similarly, for polyphase small electric motors, nearly all models had a manufacturer listed breakdown torque which was not less than 140 percent of the lower bounds of the NEMA ranges listed in Table 10–5.[21]

Also in response to the July 2017 TP RFI, Advanced Energy commented that an approach for determining the full load output power of a motor based on breakdown torque is possible, but with potentially inconsistent results due to the sensitivity of breakdown torque to voltage and temperature. Advanced Energy stated that in NEMA MG1–2014, the ranges of breakdown torque for single-phase motors are likely provided as guidance for the user and not intended to serve as a method for determining rated output power. Advanced Energy commented that the full load or rated output power of a motor is best declared by the manufacturer. (Advanced Energy, No. 25 at p. 13–14)

Regarding potentially inconsistent results when measuring breakdown torque, DOE notes that Section 12.30 of NEMA MG 1–2016 specifies that the tests to determine performance characteristics, including breakdown torque, shall be made in accordance with IEEE 114 for single-phase motors and IEEE 112 for polyphase motors. These methods include requirements for instrument calibration and measurement accuracy pertaining to voltage and temperature (see sections 4 and 5 of IEEE 114 and section 4 of IEEE 112). Further, the range of breakdown torque values that correspond to a rated horsepower value provides flexibility for some variation in test results.

Based on the ability to apply NEMA MG 1–2016 to all small electric motors subject to standards, and evidence that most manufacturers already use this method as a standard practice, DOE proposes to use breakdown torque to define rated output power. DOE proposes to define rated output power as, ''the mechanical output power that corresponds to the small electric motor's breakdown torque as specified in NEMA MG 1–2016 Table 10–5 for single-phase motors or 140 percent of the breakdown torque values specified in NEMA MG 1–2016 Table 10–5 for polyphase motors. For purposes of this definition, NEMA MG 1–2016 Table 10–5 can be applied to all small electric motors, regardless of whether elements of NEMA MG 1–2016 Table 10–5 are identified as for small or medium motors.'' DOE also proposes defining ''breakdown torque'' as referring to the maximum torque that the motor will develop with rated voltage and frequency applied without an abrupt drop in speed, determined in accordance with NEMA MG 1–2016.

DOE requests comment on the proposed definitions for ''rated output power'' and ''breakdown torque.

DOE requests comment on how to determine when an ''abrupt drop in speed'' (*e.g.,* the local maximum of the torque-speed plot closest to the rated torque) has occurred when testing the breakdown torque of a small electric motor.

3. NEMA Service Factor Load Method

DOE also researched a method of establishing rated output power based on the service factor load of a motor. NEMA MG 1–2016 defines service factor in section 1.42 as a multiplier that, when applied to the rated output power at full-load, indicates a permissible horsepower loading that may be carried under the conditions specified in NEMA MG 1–2016 section 14.37. While it is possible for a motor to operate at the service factor load, there are advantages when the motor operates at a load less than the service factor load (*e.g.,* longer motor life and greater ability to withstand occasional higher ambient temperatures). Nonetheless, DOE explored the potential use of service factor load as an intermediate step to determination of rated output power.

Section 14.37 of NEMA MG 1–2016 specifies that when operated at the service factor load, small and medium alternating current motors will have a temperature rise as specified in section 12.42.1 and 12.43 item a.2, respectively.[22] The temperature rises in these sections are specified according to insulation class (*i.e.,* A, B, F, or H).

DOE examined sections in NEMA MG 1–2016 relevant to the insulation class of a motor, which is a standardized way to describe an electrical insulation system. Section 1.65 of NEMA MG 1–2016 defines an insulation system as an assembly of insulating materials in association with the conductors and the supporting structural parts. An insulation system is composed of coil insulation with its accessories, connection and winding support insulation, and associated structural parts. Insulation systems are designated as one of four insulation classes in section 1.66 of NEMA MG 1–2016. The insulation classes are designated as A, B, F, and H, where each class has an associated maximum temperature rise at which the insulation system can safely operate. Section 1.66 of NEMA MG 1–2016 describes that these insulation classes are determined through experience or an accepted test.[23]

DOE investigated the motor industry's current use of insulation class markings to determine if insulation class is suitable to be used as a starting point for determining service factor load. DOE is aware that service factor load is related to the temperature rise of a motor, according to section 14.37 in NEMA MG 1–2016. Additionally, section 14.37 references two sections (*i.e.,* sections 12.43 item a.2 and 12.42.1), which describe temperature rise based on insulation class. Insulation class is defined in NEMA MG 1–2016 section 1.66. This information indicates that insulation class is fairly well established according to industry standards.

In examining whether insulation class is commonly used by industry for equipment within the scope of 10 CFR 431.444, DOE found that MG 1–2016 includes nameplate markings (sections 10.39 and 10.40) and that NEMA requires that small electric motor nameplates include insulation class designations. Additionally, DOE reviewed catalog data from various manufacturers, and found that catalog data usually include the insulation class of the motor. However, neither DOE nor industry require including insulation class information in catalog data. In rare cases[24] where catalog data omit the insulation class of the motor, the manufacturer knows the insulation class, as it is part of the design process for selecting materials for the motor with appropriate thermal properties.

[20] 88% of single-phase small electric motor models collected from major manufacturer's catalogs listed values for breakdown torque that corresponded to the associated NEMA range.

[21] DOE reviewed data from five major manufacturer's catalogs. Of the reviewed catalog listings, approximately 98% of polyphase small electric motor models listed values for breakdown torque that were not less than 140 percent of the associated range in Table 10–5 of NEMA MG 1.

[22] DOE notes that NEMA MG 1–2016 section 14.37 contains a typo and refers to section 12.44 item a.2 and 12.43.1.

[23] In NEMA MG 1–2016, ''experience'' means successful operation for a ''long time'' under actual operating conditions of machines designated with temperature rise at or near the temperature rating limit; ''accepted test'' means a test on a system or model system which simulates the electrical, thermal, and mechanical stresses occurring in service. The test must also be made in accordance with IEEE 43, IEEE 117, IEEE 275, and IEEE 304 when appropriate for the motor construction.

[24] DOE found that only 0.1% of 5,588 motor models with data collected from manufacturer catalogs did not include the insulation class of the motor.

Based on the information in NEMA MG 1–2016 and the prevalence of insulation class in manufacturer literature, standard industry practice is to rate motors according to NEMA insulation classes. DOE also notes that since insulation class information is included with manufacturer literature for nearly every motor model, it could be used by DOE in a test procedure without any additional testing burden. However, DOE was not able to determine whether insulation class and temperature rise, even if known, could be reliably used to derive a motor's service factor load.

In response to the July 2017 TP RFI, NEMA opposed the adoption of a method to determine full-load or rated output power of a motor based on the load which results in a temperature rise associated with the insulation class of the motor. NEMA reasoned that the insulation class for some motors is selected based on the potential for operation under harsher conditions than continuous duty in a laboratory setting. NEMA asserted that this additional design consideration would undermine a direct relationship between temperature rise, insulation class, and rated output power. NEMA commented that with respect to insulation classes, each insulation class is rated for continuous operation at a specified temperature limit. While all motors operate within the temperature limits of that insulation class, not all motors operate continuously at the same temperature. The insulation class for any given motor could be selected based on continuous use at an elevated temperature. Alternatively, it could be selected to protect motors due to spikes in temperature that cannot be controlled but are not the typical/normal operating points. (NEMA, No. 24 at p. 11–12)

Advanced Energy offered that it is possible to establish the output power rating of a motor by determining the load (*i.e.,* torque and speed) at which the motor will achieve a stable temperature that does not exceed the insulation class temperature. However, it added that there could be several loads that would meet this criterion, and therefore the horsepower determined with this method cannot necessarily be considered the correct rating of the motor. Advanced Energy commented that the full load or rated output power of a motor is best declared by the manufacturer. (Advanced Energy, No. 25 at p. 13–14)

DOE recognizes that testing at the service factor load may characterize a motor's maximum sustainable output, but may not be representative of the typical service conditions that a motor experiences. DOE also acknowledges that manufacturers may design their motors to operate optimally at a ''rated'' load that is less than the service factor load. Further, DOE recognizes that manufacturer performance information is commonly given at nominal horsepower ratings,[25] which are not always equivalent to the service factor load, and that retesting all motors to evaluate performance at the service factor load rather than at the current nominal values may be burdensome. Finally, DOE does not have sufficient data to assess the potential impact on reproducibility given that multiple load points (*i.e.,* torque and speed) may generate the same temperature rise, but the different load points may have different measured efficiencies. As a result, DOE is not proposing to require determination of rated output power on the basis of service factor load.

E. Rated Values Specified for Testing Small Electric Motors

DOE is also proposing to clarify several values used for testing small electric motors. DOE notes that the definition of average full-load efficiency at 10 CFR 431.442 specifies that it is determined when the motor operates at the rated frequency, rated load, and rated voltage. Additionally, industry standards refer to ''rated'' values which are expected to be known or provided (*e.g.,* on the nameplate). However, ''rated frequency,'' ''rated load,'' and ''rated voltage'' are not defined. To resolve any ambiguity, DOE is proposing to include additional instruction on how to derive each of these values to allow for more accurate comparisons between motors, and better ensure reproducible testing for all equipment.

1. Rated Frequency

Rated frequency is a term commonly used by industry standards developed for testing small electric motors (*e.g.,* section 6.1 in IEEE 112–2004, and section 3 in IEEE 114–2010). The test procedures and energy conservation standards established under EPCA apply to motors distributed in commerce within the United States. Within the United States, electricity is supplied at 60 Hz. However, small electric motors could be designed to operate at frequencies in addition to 60 Hz (*e.g.,* motors designed to operate at either 60 or 50 Hz).

Small electric motors subject to 10 CFR 431.444 could potentially be marketed as capable of operating at two different frequencies and could have data provided for both (*e.g.,* 60 and 50 Hz). In this case, it could be unclear at which frequency the test should be performed. Therefore, DOE proposes, through the proposed referenced test methods, that all tests be performed using a rated frequency of 60 Hz. DOE proposes 60 Hz so that the tested input frequency matches the frequency experienced by the motor when installed in the field. To implement this proposal, DOE proposes to modify 10 CFR 431.442 to define the term ''rated frequency'' as ''60 hertz.''

2. Rated Load

Rated load[26] is used in industry standards to specify a loading point for motor testing (*e.g.,* sections 5.6 and 6.1 in IEEE 112–2004, and section 8.2.1 in IEEE 114–2010). Typically, a rated load represents a power output expected from the motor (*e.g.,* a horsepower value on the nameplate). The rated load will have a corresponding rated speed and rated torque. DOE proposes to modify 10 CFR 431.442 to define the term ''rated load'' as ''the rated output power of a small electric motor'' (See section III.D.2 for definition of rated output power). DOE proposes that the rated output power (given on the motor nameplate) be used for any reference to rated load, full rated load, rated full-load, or full-load in an industry standard used for testing small electric motors.

3. Rated Voltage

Rated voltage is used in industry standards to specify the voltage supplied to the motor under test (*e.g.,* section 6.1 in IEEE 112–2004, and section 3 in IEEE 114–2010). DOE is proposing to clarify the permissible test voltage options when small electric motors are rated for use at multiple voltages (*e.g.,* 230 and 460 volts) by defining the term ''rated voltage'' at 10 CFR 431.442.

NEMA, Baldor, UL, ASAP, ACEEE, NEEA, and CA IOUs commented on this issue in response to a prior proposal related to certain certification, compliance, labeling, and enforcement issues involving electric and small electric motors. NEMA commented that with respect to single-phase capacitor run motors, DOE currently allows the manufacturer to select the voltage for compliance. NEMA also indicated that the input voltage setting can affect efficiency, noting that if DOE were to require motors to comply at the lowest

[25] Nominal horsepower ratings refer to horsepower ratings commonly used by manufacturers, and ratings for which NEMA provides specifications for (*e.g.,* 0.5, 0.75, 1, and 1.5 hp).

[26] Also referred to as full rated load, rated full-load, or full-load.

level of efficiency, manufacturers would be forced to redesign these motors, since at least some motors would be out of compliance at voltages not currently selected for certification. These redesign efforts would result in larger motors to accommodate the additional active material required to create a compliant motor and could result in the use of larger frame sizes, which would create utility problems for end users of the motors. (NEMA, EERE–2014–BT–CE–0019, No. 10 at p. 10) With respect to the input voltage setting for testing and representations, Baldor agreed with NEMA's comments. (Baldor, EERE–2014–BT–CE–0019, No. 11 at p. 6) UL and Advanced Energy also commented that the input voltage setting can affect efficiency and that DOE should either allow the manufacturer to select the input voltage for testing or require testing at all nameplate voltages. (UL, EERE–2014–BT–CE–0019, No. 9 at p. 8–9; Advanced Energy, EERE–2014–BT–CE–0019, No. 8 at p. 11) UL also commented that, should testing be required at all nameplate voltages, 208 volts should be excluded because it is typically listed as a ''usable'' voltage rather than a voltage for which the motor was designed and optimized. (UL, EERE–2014–BT–CE–0019, No. 9 at p. 9) ASAP, ACEEE, and NEEA, in a joint comment, indicated that clarification on the voltage used during the test would address ambiguity and ensure consistency. (ASAP, ACEEE, NEEA, EERE–2014–BT–CE–0019, No. 16 at p. 3) The CA IOUs also supported specifying a voltage for testing, reasoning that this would ensure consumers are unlikely to purchase a unit less efficient than advertised. (CA IOUs, EERE–2014–BT–CE–0019, No. 13 at p. 4)

In the March 2010 ECS final rule, DOE indicated the industry test procedures incorporated into DOE's regulations permit manufacturers to select the input voltage for testing. 75 FR 10874, 10892 (''DOE understands that it is at the manufacturer's discretion under which single voltage condition to test its motor.''). After considering the regulatory history on this topic and the market data supporting the notion that efficiency can vary with the input voltage setting, DOE proposes to continue to allow small electric motors to be tested at any nameplate voltage value and to specify this flexibility by defining the term ''rated voltage'' at 10 CFR 431.442 as referring to the input voltage of a small electric motor selected by the motor's manufacturer to be used for testing the motor's efficiency. In DOE's view, this change will help ensure consistency and clarity during testing and when making representations of the performance characteristics of a given motor (*i.e.,* on a motor nameplate or product catalog).

DOE requests comment on the proposed definitions, and procedures for determining the values of rated frequency and rated load for small electric motors

F. Test Procedure Costs, Harmonization, and Other Topics

1. Test Procedure Costs and Impact

EPCA requires that test procedures prescribed by DOE not be unduly burdensome to conduct. 42 U.S.C. 6314(a)(2). DOE proposes to amend (1) the existing test procedure for small electric motors (by clarifying the existing scope and testing instructions, adding an authorized procedure incorporated by reference from IEEE 112–2017, and permitting the use of IEC 60034–2–1:2014) and (2) the existing test procedure for electric motors (by proposing to permit the use of IEC 60034–2–1:2014). DOE has tentatively determined that testing under these proposed amendments would not be unduly burdensome for manufacturers to conduct and that these proposed amendments would reduce test burden for manufacturers.

DOE's analyses of this proposal indicate that, if finalized, the proposal would result in a net cost savings to manufacturers.

TABLE III–4—SUMMARY OF COST IMPACTS FOR SMALL ELECTRIC MOTORS AND ELECTRIC MOTORS

Category	Present value (million 2016$)	Discount rate (percent)
Cost savings:		
Reduction in Future Testing Costs for Small Electric Motors	0.3	3
	0.1	7
Reduction in Future Testing Costs for Electric Motors	4.0	3
	1.6	7
Total Net Cost Impact:		
Total Net Cost Impact	(4.2)	3
	(1.7)	7

TABLE III–5—SUMMARY OF ANNUALIZED COST IMPACTS FOR SMALL ELECTRIC MOTORS AND ELECTRIC MOTORS

Category	Annualized value (thousand 2016$)	Discount rate (percent)
Annualized Cost Savings:		
Reduction in Future Testing Costs for Small Electric Motors	8	3
	7	7
Reduction in Future Testing Costs for Electric Motors	119	3
	111	7
Total Net Annualized Cost Impact:		
Total Net Cost Impact	(127)	3
	(118)	7

Further discussion of the analyses of the cost impact of the proposed test procedure amendments is presented in the following paragraphs.

(a) Cost Impacts for Small Electric Motors

Regarding small electric motors, the proposed clarifications of the existing scope and test instructions would not impose any new requirements on manufacturers of regulated small electric motors. Instead, DOE's proposal, if adopted, would provide manufacturers with greater certainty in the conduct of the test procedures, offer additional testing options, and would not increase test burden. The proposed addition of IEEE 112–2017 is not expected to increase test burden or require new testing. Manufacturers would be able to rely on data generated under the current test procedure, should the proposed amendments for small electric motors be adopted, because the proposal would retain the existing test method options at 10 CFR 431.444, and none of the proposed changes would result in a change in measured efficiency under the existing test method options. Additionally, the proposed incorporation of IEC 60034–2–1:2014 would further harmonize DOE's test procedures with current industry practice and international standards by providing manufacturers with an additional testing option. This change would enable manufacturers who use IEC 60034–2–1:2014 for everyday business purposes (for international markets) or to comply with regulatory requirements in other countries to significantly reduce the number of tests that they must perform by removing the need to conduct a test according to the CSA or IEEE methods [27] currently referenced in DOE's test procedure for small electric motors. As described in section III.C.2, NEMA and UL petitioned that certain portions of IEC test procedure 60034–2–1:2014 be adopted as a permitted alternative test method for small electric motors and electric motors. UL further noted in its petition the increasing use of the IEC test procedure 60034–2–1:2014 by the industry worldwide.

Recognizing that some, but not all, manufacturers already test their motors using IEC 60034–2–1:2014, DOE assumed that 10 percent [28] of small electric motor models sold in the U.S. that are tested with either the CSA or IEEE methods referenced in the Federal test procedure are also tested with the IEC 60034–2–1 method. The savings calculated in this notice could be higher if a larger fraction of U.S.-market motor models are currently already tested to IEC 60034–2–1 (*i.e.,* greater than 10 percent).

To calculate the testing cost reduction associated with allowing the IEC 60034–2–1:2014 method for testing small electric motors, DOE estimated the number of motor models that would be tested each year for compliance. First, DOE reviewed the product catalogs of four major small electric motor manufacturers published over a seven-year period between 2009 and 2016. DOE compared the current product offerings to the historical catalogs to identify the total number of new models listed over that period of time. DOE then annualized that total number of new models. Next, DOE scaled up that annualized value based on the estimated market share of the manufacturers whose catalogs were reviewed. This scaled-up annualized value estimated the total number of new models listed for sale each year for the entire U.S. market. Then, DOE estimated that only 10 percent of new models would be tested each year. DOE made this estimate based on (1) knowledge that many motor models are grouped under a single basic model classification (and therefore each individual model would not need to be tested), (2) observations that only a fraction of electric motor basic models are tested (the remainder have efficiency determined through an alternative efficiency determination method [''AEDM'']), and (3) recognition that many motor models may have been relabeled or rebranded but not redesigned (and therefore no new testing is needed). Based on these calculations, DOE tentatively determined that approximately 1 new small electric motor basic model per year would not require testing according to the existing test methods and therefore would realize costs savings due to the proposed test procedure.

DOE estimated the cost of testing a single small electric motor unit to be $2,000 at a third-party facility and approximately $500 at an in-house facility.[29] DOE requires at least five units to be tested per basic model. 10 CFR 431.455(c)(2) To estimate in-house testing costs, DOE assumed testing a single motor unit requires approximately nine hours of a mechanical engineer technician time and three hours from a mechanical engineer. The mean hourly wage for a mechanical engineer technician is $27.97 and the total hourly compensation paid by the employer (including all fringe benefits) is $36.21. The mean hourly wage for a mechanical engineer is $43.99 and the total hourly compensation paid by the employer (including all fringe benefits) is $56.95.[30] In addition, DOE assumed that 50 percent of tests are conducted at third-party facilities and 50 percent of tests are conducted at in-house facilities. Based on these estimates, DOE anticipates annual cost savings of approximately $8,000 for the small electric motors industry.

(b) Cost Impacts for Electric Motors

Regarding electric motors, DOE is not proposing to amend the scope of applicability of the test procedure at Appendix B. Consistent with the small electric motors analysis, the proposed incorporation of IEC 60034–2–1:2014 in this test procedure would provide manufacturers additional flexibility by permitting an alternative test procedure for measuring energy loss and would further harmonize DOE's test procedures with current industry practice and international standards. DOE expects that, for those manufacturers who are already using IEC 60034–2–1:2014, this proposed change would reduce the number of tests that manufacturers perform by avoiding the need to conduct a test according to the CSA or IEEE methods [31] currently referenced in DOE's test procedure.

To calculate the testing cost reduction associated with allowing the IEC 60034–2–1:2014 method for testing electric motors, DOE employed a similar methodology to the small electric motors analysis and estimated the number of electric motor models that would be tested each year for compliance. First, DOE reviewed the

[27] CSA 747–09, CSA 390–10, IEEE 112–2004, or IEEE 114–2010 depending on the category of small electric motor.

[28] NEMA and UL did not provide quantitative information regarding the number of small electric motors that are tested with either the CSA method or the IEEE method, and the IEC method, although NEMA commented that this is an increasing trend. Based on a review of the market, only some motors appear suitable for sale in both the U.S. and foreign markets. A small fraction of motors are designed for operation on 50 Hz and 60 Hz power, or use NEMA and IEC units of measure (hp vs. kW) and other designators. The U.S. electrical grid is operated at 60 Hz, while many other countries and regions (*e.g.,* Europe) operate at 50 Hz.

[29] Estimate based on standard rates charged by third party laboratories.

[30] Bureau of Labor Statistics, Occupational Employment and Wages, 17–3027 Mechanical Engineer Technician; 17–2141 Mechanical Engineer, May 2017. Last accessed January 30, 2019, United States Census Bureau, Annual Survey of Manufacturers, 2016 for NAICS Code 335312 ''Motor and Generator Manufacturing''. Last accessed January 30, 2019.

[31] CSA 390–10 or IEEE 112–2004 depending on the category of electric motor.

product catalogs of four major electric motor manufacturers published over a six-year period between 2010 and 2016. DOE compared the current product offerings to the historical catalogs to identify the total number of new models listed over that period of time. DOE then annualized that total number of new models. Next, DOE scaled up that annualized value based on the estimated market share of the manufacturers whose catalogs were reviewed. This scaled-up annualized value estimated the total number of new models listed for sale each year for the entire U.S. market. Then, DOE estimated that only 10 percent of new models would be tested each year. DOE made this estimate based on (1) knowledge that many motor models are grouped under a single basic model classification (and therefore each individual model would not need to be tested), (2) observations that only a fraction of electric motor basic models are tested (the remainder have efficiency determined through an AEDM), and (3) recognition that many motor models that may have been relabeled or rebranded but not redesigned (and therefore no new testing is needed). Similar to what was done for small electric motors, DOE assumed that 10 percent of electric motor models sold in the U.S. that are tested with either the CSA or IEEE methods referenced in the Federal test procedure are also tested with the IEC 60034–2–1 method. The savings calculated in this notice could be higher if a larger fraction of U.S.-market motor models are currently already tested to IEC 60034–2–1. Based on these calculations, DOE tentatively determined that approximately 20 new electric motor basic models per year would not require testing according to the existing test methods and therefore would realize costs savings due to the proposed test procedure.

DOE estimated the cost of testing a single electric motor unit to be $2,000 at a third-party facility and approximately $500 at an in-house facility. DOE requires at least five units to be tested per basic model. 10 CFR 431.17(b)(2) In addition, based on DOE's understanding that this equipment is tested both in-house and at third-party testing labs, DOE assumed an even split in testing between the two venues. Based on these estimates, DOE anticipates annual industry cost savings of approximately $127,000 for electric motors that are currently subject to the standards at 10 CFR 431.25.

DOE seeks input on the testing cost impacts and manufacturer burden associated with the test procedure amendments described in this document. DOE also seeks comment and any additional data relevant to its assumptions in calculating these impacts

2. Harmonization With Industry Standards

DOE's current test procedures for electric and small electric motors are based on the industry standards that have been incorporated by reference. The current test procedures for small electric motors at 10 CFR 431.444 incorporate by reference certain provisions of IEEE 114–2010, IEEE 112–2004, CSA C747–09, CSA C390–10, all of which contain methods for measuring the energy efficiency of small electric motors. The current test procedures for electric motors in Appendix B incorporate by reference certain provisions of IEEE 112–2004 and CSA C390–10. DOE proposes to also allow the use of IEEE 112–2017, to further harmonize IEEE 112 Test Method B with the other permitted industry test methods. This NOPR also proposes to incorporate by reference certain provisions of the IEC test procedure 60034–2–1:2014 for measuring the performance of small electric motors and electric motors.

DOE requests comment on the benefits and burdens of adopting any industry/voluntary consensus-based or other appropriate test procedure, without modification

3. Other Test Procedure Topics

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of the existing test procedure for small electric motors and electric motors. DOE particularly seeks information that would ensure that the test procedure measures energy efficiency during a representative average use cycle or period of use, as well as information that would help DOE create a procedure that would limit manufacturer test burden. Comments regarding repeatability and reproducibility are also welcome.

DOE also requests information that would help it create procedures that would limit manufacturer test burden through streamlining or simplifying testing requirements without impacting testing accuracy. In particular, DOE notes that under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE must manage the costs associated with the imposition of expenditures required to comply with Federal regulations. See 82 FR 9339 (February 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its regulations applicable to small electric motors consistent with the requirements of EPCA.

G. Compliance Date

EPCA prescribes that all representations made in writing or broadcast advertisements of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (See 42 U.S.C. 6314(d)(1)) If DOE were to publish an amended test procedure, EPCA allows individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6314(d)(2)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*) By statute, any extension granted by DOE under this provision may not exceed 180 days in duration. (*Id.*)

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that this test procedure rulemaking is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the OMB.

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order (''E.O.'') 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' E.O. 13771 stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. E.O. 13771 stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued E.O. 13777, ''Enforcing the Regulatory Reform Agenda.'' E.O. 13777 required the head

of each agency designate an agency official as its Regulatory Reform Officer (''RRO''). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE initially concludes that this rulemaking is consistent with the directives set forth in these executive orders. This proposed rule is estimated to result in cost savings. This proposed rule would yield annualized cost savings of approximately $118,000 (2016$) using a perpetual time horizon discounted to 2016 at a 7 percent discount rate. Therefore, if finalized as proposed, this rule is expected to be an E.O. 13771 deregulatory action.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website at *http://energy.gov/gc/office-general-counsel*.

DOE reviewed the test procedures considered in this proposed rule to amend the test procedure for small electric motors and electric motors under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

The Small Business Administration (''SBA'') considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The size standards and codes are established by the 2017 North American Industry Classification System (''NAICS'').

Small electric motor and electric motor manufacturers are classified under NAICS code 335312, motor and generator manufacturing. The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business. DOE conducted a focused inquiry into small business manufacturers of equipment covered by this rulemaking. DOE used available public information to identify potential small manufacturers. DOE accessed the membership directories of NEMA and The Motor Control and Motor Association (MCMA) to create a list of companies that import or otherwise manufacture small electric motors and electric motors covered by this rulemaking. Using these sources, DOE identified a total of 56 distinct manufacturers of small electric motors and electric motors.

DOE then reviewed the data to determine whether the entities met the SBA's definition of ''small business'' as it relates to NAICS code 335312 and to screen out companies that do not offer equipment covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign owned and operated. Based on this review, DOE has identified 21 manufacturers that are potential small businesses. Through this analysis, DOE has determined the expected effects of the rule on these covered small businesses.

In response to the July 2017 TP RFI, NEMA provided input on the costs and time required for testing motors of different configurations. NEMA indicated that testing a motor can take as little as 8 hours and as long as 32 hours, depending on the size of the motor. NEMA noted that the teardown process also takes several hours. (NEMA, No. 24 at pp. 10–11) Advanced Energy commented that a properly conducted test could take a full working day for a large motor, excluding setup, or a minimum of half a day for a small motor. (Advanced Energy, No. 25 at p. 13) Advanced Energy commented that relative to the motors already subject to energy conservation standards and test procedure, no significant burden is expected in testing the motors categories identified by DOE in the July 2017 TP RFI. (Advanced Energy, No. 25 at p. 3) Advanced Energy noted one exception in the case of fractional horsepower motors. 82 FR 35468, 35471. Advanced Energy believes that the cost of testing these motors may far exceed the cost of the motors, themselves. (Advanced Energy, No. 25 at p. 3)

This proposal would neither expand the scope of test procedure applicability to small electric motors beyond those currently subject to test procedures, nor would it place additional requirements on those small electric motors currently subject to DOE's test procedures. Furthermore, this proposal would not place any additional requirements on those electric motors that are already subject to DOE's test procedures, nor would it require manufacturers to retest existing electric motors. Accordingly, manufacturers would not be required under this proposal to retest any existing small electric motors or electric motors already subject to DOE's test procedures.

This proposal, if adopted, would also not increase testing costs nor would it impose any additional testing burden on manufacturers. Therefore, DOE concludes that the impacts of this proposal would not have a ''significant economic impact on a substantial number of small entities,'' and the preparation of an IRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

DOE seeks comments on whether the proposed test procedure would place new and significant burdens on a substantial number of small entities

D. Review Under the Paperwork Reduction Act of 1995

Manufacturers of electric motors must certify to DOE that their equipment comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their equipment according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping

requirements for covered consumer products and commercial equipment, including electric motors. (See subpart B of 10 CFR part 431) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule, if adopted, would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

F. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act (NEPA) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, Appendix A5. DOE anticipates that this rulemaking qualifies for categorical exclusion A5 because it is an interpretive rulemaking that does not change the environmental effect of the rule and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

G. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

H. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

I. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the proposal contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

J. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this proposed

regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

K. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of small electric motors is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

M. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedures for small electric motors and electric motors adopted in this NOPR incorporate testing methods contained in certain sections of the following commercial standard: ''IEC 60034–2–1:2014 Rotating electrical machines—Part 2–1: Standard methods for determining losses and efficiency from tests (excluding machines for traction vehicles).'' DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

N. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference standards published by IEEE, IEC, and NEMA. The IEC standard, titled ''IEC 60034–2–1:2014 Rotating electrical machines—Part 2–1: Standard methods for determining losses and efficiency from tests (excluding machines for traction vehicles)'' is a proposed alternative industry standard to those currently incorporated by reference (IEEE 112–2004, IEEE 114–2010, CSA C747–09, and CSA C390–10) for measurement of small electric motor efficiency and electric motor efficiency (See section III.C.1 for more details). IEC 60034–2–1:2014 establishes methods of determining efficiencies from tests and to specify methods of obtaining specific losses. In addition, DOE proposed to incorporate by reference two additional IEC standards, titled ''IEC 60034–1:2010, Rotating electrical machines—Part 1: Rating and performance'' and ''IEC 60051–1:2016, Direct acting indicating analogue measuring instruments and their accessories—Part 1: Definitions and general requirements common to all parts.'' IEC 60034–1:2001 and IEC 60051–1:2016 specify test conditions and procedures that are required for application of the test methods for measurement of energy efficiency established in IEC 60034–2–1:2014. The IEEE standard, titled ''IEEE 112–2017, Test Procedure for Polyphase Induction Motors and Generators'' establishes additional methods of measurement for current and frequency for both small electric motors and electric motors. Further, DOE proposes to additionally incorporate IEEE 112–2017 Test Method A and Test Method B as alternatives to the industry test methods that are currently incorporated by reference from IEEE 112–2004 (See section III.C.1 for more details). These proposals will harmonize the permitted test methods under subparts X (for small electric motors) and B (for electric motors) of 10 CFR part 431 and align measurement and instrumentation requirements with industry practice. The NEMA standard, titled ''NEMA MG 1–2016 Motors and Generators'' establishes industry definitions for breakdown torque of small electric motors (See section III.D.2 for more details).

In summary, DOE proposes to incorporate by reference the following standards:

(1) IEC 60034–1:2010, ''Rotating electric machines—Part 1: Rating and performance''.

(2) IEC 60034–2–1:2014, ''Rotating electrical machines—Part 2–1: Standard methods for determining losses and efficiency from tests (excluding machines for traction vehicles)''.

(3) IEC 60051–1:2016, ''Direct acting indicating analogue electrical measuring instruments and their accessories—Part 1: Definitions and general requirements common to all parts''.

(4) IEEE 112–2017, ''IEEE Standard Test Procedure for Polyphase Induction Motors and Generators''.

(5) National Electrical Manufacturers Association (NEMA) MG 1–2016, ''Motors and Generators''.

Copies of these standards can be obtained from the organizations directly at the following addresses:

- International Electrotechnical Commission, 3 rue de Varembé, 1st floor, P.O. Box 131, CH—1211 Geneva 20—Switzerland, +41 22 919 02 11, or

by visiting *https://webstore.iec.ch/home*.

• IEEE, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, (732) 981–0060, or by visiting *http://www.ieee.org*.

• NEMA, 1300 North 17th Street, Suite 900, Arlington, Virginia 22209, +1 703 841 3200, or by visiting *https://www.nema.org*.

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this proposed rulemaking.

Submitting comments via *http://www.regulations.gov*. The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or postal mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *http://www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 586–6636 or via email at *ApplianceStandardsQuestions@ee.doe.gov*.

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comments on its proposal to maintain the current scope of applicability, with respect to horsepower ratings, of the small electric motors test procedure.

(2) DOE requests comment on its proposal to incorporate by reference IEEE 112–2017 Test Method A and Test

Method B as alternatives to the currently incorporated industry test standards in IEEE 112–2004. In particular, DOE requests data comparing test results of these standards.

(3) DOE requests comment on its proposal to incorporate by reference IEC 60034–2–1:2014 Method 2–1–1A as an alternative to currently incorporated industry testing standards IEEE 112–2004 Test Method A and CSA C747–09. In particular, DOE requests data comparing the average full-load efficiency test results of those standards. DOE requests comments on its proposal to limit torque measurement, when using IEC 60034–2–1:2014 Method 2–1–1A, to either in-line, shaft-coupled, rotating torque transducers or stationary, stator reaction torque transducers.

(4) DOE requests comment on its proposal to incorporate by reference IEC 60034–2–1:2014 Method 2–1–1B as an alternative to the currently incorporated industry testing standards IEEE 112–2004 Test Method B and CSA C390–10 and to IEEE 112–2017-Test Method B. In particular, DOE requests data comparing test results of those standards.

(5) DOE requests comment on the proposed definitions for ''rated output power'' and ''breakdown torque.''

(6) DOE requests comment on how to determine when an ''abrupt drop in speed'' (*e.g.,* the local maximum of the torque-speed plot closest to the rated torque) has occurred when testing the breakdown torque of a small electric motor.

(7) DOE requests comment on the proposed definitions, and procedures for determining the values of rated frequency and rated load for small electric motors.

(8) DOE seeks input on the testing cost impacts and manufacturer burden associated with the test procedure amendments described in this document. DOE also seeks comment and any additional data relevant to its assumptions in calculating these impacts.

(9) DOE seeks comment on the degree to which the DOE test procedure should consider, and be harmonized further with, the most recent relevant industry standards for small electric motors and whether there are any changes to the Federal test method that would provide additional benefits to the public. DOE also requests comment on the benefits and burdens of adopting any industry/voluntary consensus-based or other appropriate test procedure, without modification.

(10) DOE seeks comments on whether the proposed test procedure would place new and significant burdens on a substantial number of small entities.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, Reporting and recordkeeping requirements.

Signed in Washington, DC, on March 20, 2019.

Steven Chalk,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend part 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 431.15 is amended by:
■ a. Revising paragraph (a);
■ b. Redesignating paragraph (c)(4) as paragraph (c)(7) and paragraphs (c)(2) and (3) as paragraphs (c)(4) and (5), respectively;
■ c. Adding new paragraphs (c)(2), (3), and (6); and
■ d. Adding paragraph (d)(2).

The revision and additions read as follows:

§ 431.15 Materials incorporated by reference.

(a) Certain material is incorporated by reference into subpart B of part 431 with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–2945, or go to *http://www1.eere.energy.gov/buildings/appliance_standards/,* and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

(c) * * *

(2) IEC 60034–1:2010, ''Rotating electrical machines—Part 1: Rating and performance'', IBR approved for appendix B to subpart B of this part.

(3) IEC 60034–2–1:2014, ''Rotating electrical machines—Part 2–1: Standard methods for determining losses and efficiency from tests (excluding machines for traction vehicles)'', IBR approved for appendix B to subpart B of this part.

* * * * *

(6) IEC 60051–1:2016, ''Direct acting indicating analogue electrical measuring instruments and their accessories—Part 1: Definitions and general requirements common to all parts'', IBR approved for appendix B to subpart B of this part.

* * * * *

(d) * * *

(2) IEEE 112–2017, ''IEEE Standard Test Procedure for Polyphase Induction Motors and Generators'', approved February 14, 2018, IBR approved for §§ 431.12, 431.19, 431.20, and appendix B to subpart B of this part.

* * * * *

■ 3. Appendix B to subpart B of part 431 is amended by revising the introductory note and Sections 2 and 4 to read as follows:

Appendix B to Subpart B of Part 431—Uniform Test Method for Measuring Nominal Full Load Efficiency of Electric Motors

Note: For any electric motor type that is not currently covered by the energy conservation standards at 10 CFR 431.25, manufacturers of this equipment will need to use Appendix B 180 days after the effective date of the final rule adopting energy conservation standards for these motors.

Incorporation by Reference

In § 431.15, DOE incorporated by reference, the entire standard for CSA C390–10, IEC 60034–2–1:2014, IEC 60034–1:2010, IEC 60051–1:2016, and IEEE 112–2017 into this appendix; however, only the provisions of those documents specified in section 2 of this appendix are applicable to this appendix.

In cases where there is a conflict, the language of this appendix takes precedence over those documents. Any subsequent amendment to a referenced document by the standard-setting organization will not affect the test procedure in this appendix, unless and until the test procedure is amended by DOE. Material is incorporated as it exists on the date of the approval, and a notification of any change in the material will be published in the **Federal Register**.

* * * * *

2. Test Procedures

Efficiency and losses must be determined in accordance with NEMA MG 1–2009, paragraph 12.58.1, ''Determination of Motor Efficiency and Losses,'' (incorporated by reference, see § 431.15) and one of the following testing methods:

(1) CSA C390–10 (incorporated by reference, see § 431.15), Section 1.3 ''Scope'', Section 3.1 ''Definitions'', Section 5 ''General test requirements—Measurements'', Section 7 ''Test method'', Table 1 ''Resistance measurement time delay'', Annex B ''Linear regression analysis'' and Annex C ''Procedure for correction of dynamometer torque readings.''

(2) IEC 60034–2–1:2014 Method 2–1–1B (incorporated by reference, see § 431.15), Section 3 ''Terms and definitions'', Section 4 ''Symbols and abbreviations'', Section 5 ''Basic requirements'', Section 6.1.3 ''Method 2–1–1B—Summation of losses, additional load losses according to the method of residual losses.'' The supply voltage shall be in accordance with section 7.2 of IEC 60034–1:2010 (incorporated by reference, see § 431.15). The measured resistance at the end of the thermal test shall be determined in a similar way to the extrapolation procedure described in section 8.6.2.3.3 of IEC 60034–1:2010 (incorporated by reference, see § 431.15), using the shortest possible time instead of the time interval specified in Table 5 therein, and extrapolating to zero. The measuring instruments for electrical quantities shall have the equivalent of an accuracy class of 0,2 in case of a direct test and 0,5 in case of an indirect test in accordance with IEC 60051–1:2016 (incorporated by reference, see § 431.15).

(3) IEEE 112–2004, Section 6.4 ''Efficiency test method B—Input-output with loss segregation (incorporated by reference, see § 431.15), or

(4) IEEE 112–2017 Test Method B, Input-Output With Loss Segregation, (incorporated by reference, see § 431.15), Section 3 ''General'', Section 4 ''Measurements'', Section 5 ''Machine losses and tests for losses'', Section 6.1 ''General'', Section 6.4 ''Efficiency test method B—Input-output with loss segregation'', Section 7 ''Other performance tests'', Section 9.2 ''Form A—Method A'', Section 9.3 ''Form A2—Method A calculations'', Section 9.4 ''Form B—Method B'', and Section 9.5 ''Form B2—Method B calculations.

* * * * *

4. Procedures for the Testing of Certain Electric Motor Types

Prior to testing according to CSA C390–10, IEC 60034–2–1:2014 Method 2–1–1B, IEEE 112–2004 (Test Method B), or IEEE 112–2017 (Test Method B) (incorporated by reference, see § 431.15), each basic model of the electric motor types listed below must be set up in accordance with the instructions of this section to ensure consistent test results. These steps are designed to enable a motor to be attached to a dynamometer and run continuously for testing purposes. For the purposes of this appendix, a ''standard bearing'' is a 6000 series, either open or grease-lubricated double-shielded, single-row, deep groove, radial ball bearing.

* * * * *

■ 4. Section 431.442 is amended by adding in alphabetical order definitions for ''breakdown torque'', ''rated frequency'', ''rated load'', ''rated output power'', and ''rated voltage'', to read as follows:

§ 431.442 Definitions.

* * * * *

Breakdown torque means the maximum torque that the motor will develop with rated voltage and frequency applied without an abrupt drop in speed, determined in accordance with NEMA MG 1–2016 (incorporated by reference, see § 431.443).

* * * * *

Rated frequency means 60 hertz.

Rated load means the rated output power of a small electric motor.

Rated output power means the mechanical output power that corresponds to the small electric motor's breakdown torque as specified in NEMA MG 1–2016 Table 10–5 (incorporated by reference, see § 431.443) for single-phase motors or 140 percent of the breakdown torque values specified in NEMA MG 1–2016 Table 10–5 for polyphase motors. For purposes of this definition, NEMA MG 1–2016 Table 10–5 is applied regardless of whether elements of NEMA MG 1–2016 Table 10–5 are identified as for small or medium motors.

Rated voltage means the input voltage of a small electric motor selected by the motor's manufacturer to be used for testing the motor's efficiency.

* * * * *

■ 5. Section 431.443 is amended by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraph (c) as (d);

■ c. Adding new paragraph (c);

■ d. Redesignating newly designated paragraph (d)(2) as paragraph (d)(3), and adding new paragraph (d)(2); and

■ e. Adding paragraph (e).

The revisions and additions read as follows:

§ 431.443 Materials incorporated by reference.

(a) Certain material is incorporated by reference into subpart X of part 431 with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–2945, or go to *http://www1.eere.energy.gov/buildings/appliance_standards/,* and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

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(c) IEC. International Electrotechnical Commission, 3 rue de Varembé, 1st Floor, P.O. Box 131, CH—1211 Geneva 20—Switzerland, +41 22 919 02 11, or go to *https://webstore.iec.ch/home.*

(1) IEC 60034–1:2010, ''Rotating electrical machines—Part 1: Rating and performance'', IBR approved for §§ 431.444, 431.447.(2) IEC 60034–2–1:2014 (''IEC 60034–2–1''), ''Rotating electrical machines—Part 2–1: Standard methods for determining losses and efficiency from tests (excluding machines for traction vehicles)'', approved June 2014, IBR approved for §§ 431.444, 431.447.

(3) IEC 60051–1:2016, ''Direct acting indicating analogue electrical measuring instruments and their accessories—Part 1: Definitions and general requirements common to all parts'', IBR approved for §§ 431.444, 431.447.

(d) * * *

(2) IEEE 112–2017, ''IEEE Standard Test Procedure for Polyphase Induction Motors and Generators'', approved February 14, 2018, IBR approved for §§ 431.444, 431.447.

* * * * *

(e) *NEMA.* National Electrical Manufacturers Association, 1300 North 17th Street, Suite 900, Arlington, Virginia 22209, +1 703 841 3200, or go to *https://www.nema.org.*

(1) NEMA MG 1–2016, ''Motors and Generators'', approved March 2017, IBR approved for §§ 431.442.

(2) [Reserved].

■ 6. Section 431.444 is revised to read as follows:

§ 431.444 Test Procedures for the measurement of energy efficiency of small electric motors.

Prior to [DATE 180 days after publication of a final rule in the **Federal Register**], representations with respect to the energy use or efficiency of small electric motors must be based on testing conducted in accordance with § 431.444 as it appeared in 10 CFR part 431 subpart X in the 10 CFR parts 200 through 499 edition revised as of January 1, 2019. Starting on [Date 180 days after publication of a final rule in the **Federal Register**] representations with respect to energy use or efficiency of small electric motors must be based

on testing conducted in accordance with the results of testing pursuant to this section.

(a) *Scope.* Pursuant to section 346(b)(1) of EPCA, this section provides the test procedures for measuring the full-load efficiency of small electric motors pursuant to EPCA. (42 U.S.C. 6317(b)(1)) For purposes of this part 431 and EPCA, the test procedures for measuring the efficiency of small electric motors shall be the test procedures specified in paragraph (b) of this section.

(b) *Testing and Calculations.* Determine the full-load efficiency of a small electric motor using one of the test methods listed in paragraphs (b)(2) through (4) of this section. Where the terms ''rated frequency,'' ''rated load,'' and ''rated voltage'' appear in the standards incorporated by reference, use the corresponding definitions provided at § 431.442.

(1) *Incorporation by reference.* (i) In § 431.443, DOE incorporated by reference the entire standard for CSA C747–09, CSA C390–10, IEC 60034–2–1:2014, IEC 60034–1:2010, IEC 60051–1:2016, and IEEE 112–2017 into this section; however, only the provisions of those documents specified in paragraphs (b)(2) through (4) of this section are applicable to this section.

(ii) In cases where there is a conflict, the language of this appendix takes precedence over those documents. Any subsequent amendment to a referenced document by the standard-setting organization will not affect the test procedure in this appendix, unless and until the test procedure is amended by DOE. Material is incorporated as it exists on the date of the approval, and a notification of any change in the material will be published in the **Federal Register**.

(2) *Single-phase small electric motors.* For single-phase small electric motors, use one of the following methods:

(i) IEEE 114–2010,, Section 3.2, ''Test with load'', Section 4, ''Testing Facilities, Section 5, ''Measurements'', Section 6, ''General'', Section 7, ''Type of loss'', Section 8, ''Efficiency and Power Factor''; Section 10 ''Temperature Tests'', Annex A, Section A.3 ''Determination of Motor Efficiency'', Annex A, Section A.4 ''Explanatory notes for form 3, test data'';

(ii) CSA C747–09, Section 1.6 ''Scope'', Section 3 ''Definitions'', Section 5, ''General test requirements'', and Section 6 ''Test method'';

(iii) IEC 60034–2–1:2014 Method 2–1–1A., Section 3 ''Terms and definitions'', Section 4 ''Symbols and abbreviations'', Section 5 ''Basic requirements'', and Section 6.1.2 ''Method 2–1–1A—Direct measurement of input and output'' (except Section 6.1.2.2, ''Test Procedure''). The supply voltage shall be in accordance with section 7.2 of IEC 60034–1:2010 (incorporated by reference, see § 431.443). The measured resistance at the end of the thermal test shall be determined in a similar way to the extrapolation procedure described in section 8.6.2.3.3 of IEC 60034–1:2010 (incorporated by reference, see § 431.443), using the shortest possible time instead of the time interval specified in Table 5 therein, and extrapolating to zero. The measuring instruments for electrical quantities shall have the equivalent of an accuracy class of 0,2 in case of a direct test and 0,5 in case of an indirect test in accordance with IEC 60051–1:2016 (incorporated by reference, see § 431.443).

(A) *Additional IEC 60034–2–1:2014 Method 2–1–1A Torque Measurement Instructions.* If using IEC 60034–2–1:2014 Method 2–1–1A to measure motor performance, follow the instructions in paragraph (b)(2)(iii)(B) of this section, instead of section 6.1.2.2 of IEC 60034–2–1:2014;

(B) Couple the machine under test to a load machine. Measure torque using an in-line, shaft-coupled, rotating torque transducer or stationary, stator reaction torque transducer. Operate the machine under test at the rated load until thermal equilibrium is achieved (rate of change 1 K or less per half hour). Record U, I, Pel, n, T, θc.

(3) *Polyphase small electric motors of less than or equal to 1 horsepower (0.75 kW).* For polyphase small electric motors with 1 horsepower or less, use one of the following methods:

(i) IEEE 112–2004, Section 6.3, ''Efficiency test method A—Input-output'';

(ii) IEEE 112–2017, Section 3, ''General'', Section 4, ''Measurements'', Section 5, ''Machine losses and tests for losses'', Section 6.1, ''General'', Section 6.3, ''Efficiency test method A—Input-output'', Section 9.2, ''Form A—Method A'', and Section 9.3, ''Form A2—Method A calculations'';

(iii) CSA C747–09,, Section 1.6 ''Scope'', Section 3 ''Definitions'', Section 5, ''General test requirements'', and Section 6 ''Test method'';

(iv) IEC 60034–2–1:2014, Section 3 ''Terms and definitions'', Section 4 ''Symbols and abbreviations'', Section 5 ''Basic requirements'', and Section 6.1.2 ''Method 2–1–1A—Direct measurement of input and output'' (except Section 6.1.2.2, ''Test Procedure''). The supply voltage shall be in accordance with section 7.2 of IEC 60034–1:2010 (incorporated by reference, see § 431.443). The measured resistance at the end of the thermal test shall be determined in a similar way to the extrapolation procedure described in section 8.6.2.3.3 of IEC 60034–1:2010 (incorporated by reference, see § 431.443), using the shortest possible time instead of the time interval specified in Table 5 therein, and extrapolating to zero. The measuring instruments for electrical quantities shall have the equivalent of an accuracy class of 0,2 in case of a direct test and 0,5 in case of an indirect test in accordance with IEC 60051–1:2016 (incorporated by reference, see § 431.443).

(A) *Additional IEC 60034–2–1:2014 Method 2–1–1A Torque Measurement Instructions.* If using IEC 60034–2–1:2014 Method 2–1–1A to measure motor performance, follow the instructions in paragraph (b)(3)(iv)(B) of this section, instead of section 6.1.2.2 of IEC 60034–2–1:2014;

(B) Couple the machine under test to load machine. Measure torque using an in-line shaft-coupled, rotating torque transducer or stationary, stator reaction torque transducer. Operate the machine under test at the rated load until thermal equilibrium is achieved (rate of change 1 K or less per half hour). Record U, I, Pel, n, T, θc.

(4) *Polyphase small electric motors of greater than 1 horsepower (0.75 kW).* For polyphase small electric motors exceeding 1 horsepower, use one of the following methods:

(i) IEEE 112–2004, Section 6.4, ''Efficiency test method B—Input-output with loss segregation''; or

(ii) IEEE 112–2017, Section 3, ''General''; Section 4, ''Measurements''; Section 5, ''Machine losses and tests for losses'', Section 6.1, ''General'', Section 6.4, ''Efficiency test method B—Input-output with loss segregation'', Section 9.4, ''Form B—Method B'', and Section 9.5, ''Form B2—Method B calculations''; or

(iii) CSA C390–10, Section 1.3, ''Scope'', Section 3.1, ''Definitions'', Section 5, ''General test requirements—Measurements'', Section 7, ''Test method'', Table 1, ''Resistance measurement time delay, Annex B, ''Linear regression analysis'', and Annex C, ''Procedure for correction of dynamometer torque readings''; or

(iv) IEC 60034–2–1:2014, Section 3 ''Terms and definitions'', Section 4 ''Symbols and abbreviations'', Section 5 ''Basic requirements'', Section 6.1.3 ''Method 2–1–1B—Summation of losses, additional load losses according to the method of residual losses.'', and Annex D, ''Test report template for 2–1–1B''.

The supply voltage shall be in accordance with section 7.2 of IEC 60034–1:2010 (incorporated by reference, see § 431.443). The measured resistance at the end of the thermal test shall be determined in a similar way to the extrapolation procedure described in section 8.6.2.3.3 of IEC 60034–1:2010 (incorporated by reference, see § 431.443), using the shortest possible time instead of the time interval specified in Table 5 therein, and extrapolating to zero. The measuring instruments for electrical quantities shall have the equivalent of an accuracy class of 0,2 in case of a direct test and 0,5 in case of an indirect test in accordance with IEC 60051–1:2016 (incorporated by reference, see § 431.443).

■ 7. Section 431.447 is amended by revising paragraphs (b)(4) and (c)(4), to read as follows:

§ 431.447 Department of Energy recognition of nationally recognized certification programs.

* * * * *

(b) * * *

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE 112–2004, IEEE 112–2017, IEEE Std 114–2010, IEC 60034–2–1, CSA C390–10, and CSA C747 (incorporated by reference, see § 431.443) or similar procedures and methodologies for determining the energy efficiency of small electric motors. It must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency.

(c) * * *

(4) *Expertise in small electric motor test procedures.* The petition should set forth the program's experience with the test procedures and methodologies in IEEE Std 112–2004, IEEE Std 112–2017, IEEE Std 114–2010, IEC 60034–2–1, CSA C390–10, and CSA C747 (incorporated by reference, see § 431.443) and with similar procedures and methodologies. This part of the petition should include items such as, but not limited to, a description of prior projects and qualifications of staff members. Of particular relevance would be documentary evidence that establishes experience in applying guidelines contained in the ISO/IEC Guide 25, General Requirements for the Competence of Calibration and Testing Laboratories to energy efficiency testing for electric motors.

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Part IV

General Services Administration

48 CFR Parts 501, 515, 538, et al.
General Services Administration Acquisition Regulation (GSAR); Federal Supply Schedule Contracting (Administrative Changes); Final Rule

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 515, 538, and 552

[Change 100; GSAR Case 2013–G502; Docket No. GSA–GSAR–2019–0008; Sequence No.1]

RIN 3090–AJ41

General Services Administration Acquisition Regulation (GSAR); Federal Supply Schedule Contracting (Administrative Changes)

AGENCY: Office of Acquisition Policy, General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) Part 515, Contracting by Negotiation, Part 538, Federal Supply Schedule Contracting, and GSAR Part 552, Solicitation Provisions and Contract Clauses, to clarify, update, and incorporate existing Federal Supply Schedule contract administration policies and procedures.

DATES: *Effective:* May 23, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Bowman, General Services Acquisition Policy Division, GSA, 202–357–9652 or email *Dana.Bowman@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite GSAR Case 2013–G502.

SUPPLEMENTARY INFORMATION:

I. Background

In 2006, GSA initiated a rewrite of the GSAM to consolidate, update, and revise policy to fulfill statutory and executive order requirements, meet the needs of evolving acquisition programs within GSA's Federal Acquisition Service (FAS), Public Building Service (PBS), and other staff procurement offices, and ensure consistency with the FAR.

GSAR Case 2006–G507 was created to rewrite GSAR Part 538, Federal Supply Schedule Contracting. The proposed rule, published in the **Federal Register** at 74 FR 4596, on January 26, 2009, received well over 100 public comments and received considerable stakeholder opposition. Therefore, GSA withdrew this case (*i.e.,* the complete rewrite of GSAM Part 538) in favor of an iterative approach—opening cases with a more limited scope to allow stakeholders to focus on specific issues that allowed for robust analysis and discussion as well as increased transparency—while expediting the rulemaking process as much as possible.

GSAR Case 2013–G502 *Federal Supply Schedule Contracting (Administrative Changes)*[1] was opened as one of several cases to reform the Federal Supply Schedule (FSS) Program and address outstanding issues. This case is focused on incorporating non-complex provisions and clauses, updating administrative matters, and restructuring the GSAR to be more consistent with the FAR in terms of the FSS program.

GSA's FSS program, commonly known as the GSA Schedules program or Multiple Award Schedule (MAS) program, is the Government's most used commercial-item purchasing channel, accounting for approximately $34.2 billion of Federal contract awards in fiscal year 2018 (not including the VA Schedules).

GSA Schedules provide a convenient and effective option for both ordering activities and Schedule contractors. Ordering activities enjoy simplified ordering procedures and reduced prices, while Schedule contractors connect with federal business quickly and easily. Additional features of the Schedules program, including Blanket Purchase Agreements (BPAs) and Contractor Team Arrangements (CTAs), greatly enhance the flexibility of the program. These features offer:

- Additional price discounts for ordering activities;
- Expanded opportunities for contractors;
- Elimination of redundant effort, with a single contracting vehicle fulfilling complex or ongoing needs;
- Reductions in administrative time and paperwork;
- Expanded business opportunities for socioeconomic groups; and
- Help for ordering activities wishing to reach socio-economic goals.

The Schedules Program supports Federal Agencies' missions by providing access from simple commodities such as pens and pencils to complex services such as IT Modernization.

Authority for This Rulemaking

Pursuant to paragraph (3) of section 152 of Title 41 of the United States Code, GSA is authorized to establish procedures for the Federal Supply Schedules (FSS) program. FSS procedures meet the Competition in Contracting Act (CICA) requirement of full and open competition as long as participation has been open to all responsible sources; and orders and contracts under those procedures result in the lowest overall cost alternative to meet the needs of the Federal Government.

II. Discussion of the Final Rule

GSA published a proposed rule with a request for public comments in the **Federal Register** at 79 FR 54126 on September 10, 2014 to clarify and update the contracting by negotiations GSAR section and incorporate existing Federal Supply Schedule Contracting policies and procedures, and corresponding provisions and clauses. This final rule amends the GSAR at GSAR part 515, Contracting by Negotiation, GSAR part 538, Federal Supply Schedule Contracting, and corresponding provisions and clauses in GSAR part 552, Solicitation Provisions and Contract Clauses.

Specifically, the GSAR amendments included in this final rule are as follows:

1. *Solicitation and Contract Structuring:* GSAR 538.273 is restructured to be more consistent with the formation of Federal Supply Schedule (FSS) solicitations and contracts. The previous structure of GSAR 538.273 was based upon whether the FSS was single-award or multiple-award. A more practical structure outlines where each provision or clause shall be located in FSS solicitations and contracts (*e.g.,* as an addendum to FAR clause 52.212–1 or 52.212–4).

2. *New Clauses and Provisions:* Thirty (30) new FSS-specific clauses and provisions, previously implemented through internal GSA policy and currently in FSS solicitations and contracts are incorporated into GSAR parts 538 and 552. Bringing these clauses and provisions into the GSAR allows for greater transparency, and consolidates all regulations into one area, while updating administrative information to ensure currency and consistency within the FSS program. The thirty (30) new provisions/clauses, prescriptions, and brief descriptions are as follows:

[1] See 79 FR 54126, dated September 10, 2014; Extension 79 FR 64356, dated October 29, 2014.

No.	Name	Prescription	Description
552.238–70	Cover Page for Worldwide Federal Supply Schedules.	Use in all FSS solicitations. Use Alternate I for single-award Federal Supply Schedules.	This provision notifies the Offeror of the industry and types of products/services being solicited.
552.238–71	Notice of Total Small Business Set-Aside.	Use in FSS solicitations containing Special Item Numbers (SINs) that are set aside for small business.	This provision notifies small business Offerors which Special Item Numbers (SINs) are set aside.
552.238–72	Information Collection Requirements.	Use in all FSS solicitations.	This provision informs Offerors that only required regulations are contained in the solicitation.
552.238–74	Introduction of New Supplies/Services (INSS).	Use only in FSS solicitations allowing the introduction of new supplies/services. Note: GSA Form 1649, Notification of Federal Supply Schedule Improvement, may be required if revising a Special Item Number (SIN).	This provision notifies Offerors of the method to propose new services or supplies not covered by the Schedule.
552.238–76	Use of Non-Government Employees to Review Offers.	Use only in FSS solicitations when non-Government employees may be utilized to review solicitation responses.	This provision provides notification to Offerors that non-Government employees may be utilized to review their solicitation response.
552.238–87	Delivery Prices	Use in all FSS solicitations and contracts.	This clause ensures all parties are aware of the delivery terms of the contract.
552.238–88	GSA Advantage!	Use in all FSS solicitations and contracts except the Department of Veterans Affairs Federal Supply Schedules.	This clause outlines to the Contractor that it must participate in the GSA Advantage!® online shopping service. This clause is not applicable to the Department of Veterans Affairs.
552.238–89	Deliveries to the U.S. Postal Service.	Use only in FSS solicitations and contracts for mailable articles when delivery to a U.S. Postal Service (USPS) facility is contemplated.	This clause provides requirements for the delivery of mailable articles delivered direct to a USPS facility. The clause ensures the use of the USPS to reduce unnecessary costs of shipping.
552.238–90	Characteristics of Electric Current.	Use only in FSS solicitations and contracts when the supply of equipment that uses electrical current is contemplated.	This clause requires the Contractor to provide equipment with electrical currents suitable for the location in which the equipment is to be used, as specified on the order.
552.238–91	Marking and Documentation Requirements for Shipping.	Use only in FSS solicitations and contracts for supplies when the need for outlining the minimum information and documentation required for shipping is contemplated.	This clause defines the responsibility of Ordering Activities and Contractors for the marking and documentation of shipping information.
552.238–92	Vendor Managed Inventory (VMI) Program.	Use only in FSS solicitations and contracts for supplies when a VMI Program is contemplated.	This clause allows Contractors that commercially provide a VMI type system to enter into similar partnerships with customers under a Blanket Purchase Agreements.
552.238–93	Order Acknowledgement	Use only in FSS solicitations and contracts for supplies.	This clause requires Contractors to acknowledge orders which state ''Order Acknowledgement Required'' within 10 calendar days after receipt to the Ordering Activity placing the order and contain information pertinent to the order, including the anticipated delivery date.
552.238–94	Accelerated Delivery Requirements.	Use only in FSS solicitations and contracts for supplies.	This clause assists with the request of accelerated delivery when the FSS contract delivery period does not meet the bona fide urgent delivery requirements of an Ordering Activity.
552.238–95	Separate Charge for Performance Oriented Packaging (POP).	Use only in FSS solicitations and contracts for items defined as hazardous under Federal Standard No. 313.	This clause ensures both parties, Contractors and Ordering Activities, are aware of a separate charge for preservation, packaging, packing and marking and labeling of domestic and overseas HAZMAT surface shipments.
552.238–96	Separate Charge for Delivery Within Consignee's Premises.	Use only in FSS solicitations and contracts for supplies when allowing Offerors to propose separate charges for deliveries within the consignee's premises.	This clause ensures both parties, Contractors and Ordering Activities, are aware of a separate charges for deliveries within the consignee's premises.

No.	Name	Prescription	Description
552.238–97	Parts and Service	Use in all FSS solicitations and contracts.	This clause is used to ensure that the parts and services (including the performance of warranty or guarantee service) submitted by Offerors (dealers/distributors) is good for the entire contract period.
552.238–98	Clauses for Overseas Coverage.	Use only in FSS solicitations and contracts when overseas acquisition is contemplated. The following clauses and provisions shall also be inserted in full text, when applicable. (a) 52.214–34 *Submission of Offers in the English Language*. (b) 52.214–35 *Submission of Offers in U.S. Currency*. (c) 552.238–90 *Characteristics of Electric Current*. (d) 552.238–91 *Marking and Documentation Requirements Per Shipment*. (e) 552.238–97 *Parts and Service*. (f) 552.238–99 *Delivery Prices Overseas*. (g) 552.238–100 *Transshipments*. (h) 552.238–101 *Foreign Taxes and Duties*. (i) 52.247–34 *FOB Destination*. (j) 52.247–38 *FOB Inland Carrier, Point of Exportation*. (k) 52.247–39 *FOB Inland Point, Country of Importation*.	This clause ensures all applicable overseas clauses are included in the solicitation and contract.
552.238–99	Delivery Prices Overseas	Use only in FSS solicitations and contracts when overseas acquisition is contemplated.	This clause is for use for f.o.b. destination in overseas deliveries to ensure that all parties are aware of delivery terms.
552.238–100	Transshipments	Use in FSS solicitations and contracts when overseas acquisition is contemplated.	This clause states the terms and conditions for transshipments, and provides information to Contractors with the necessary Department of Defense forms.
552.238–101	Foreign Taxes and Duties	Use only in FSS solicitations and contracts when overseas acquisition is contemplated.	This clause delineates which fees, taxes and other foreign Governmental costs are exempt/non-exempt by the U.S. Government.
552.238–102	English Language and U.S. Dollar Requirements.	Use in all FSS solicitations and contracts.	This clause is used to instruct Contractors that all documents shall be produced in the English language, including, but not limited to, price lists and catalogs.
552.238–103	Electronic Commerce	Use in all FSS solicitations and contracts except the Department of Veterans Affairs Federal Supply Schedules.	This clause outlines the use of electronic commerce/data interchange to conduct contract processes and procedures.
552.238–104	Dissemination of Information by Contractor.	Use in all FSS solicitations and contracts.	This clause provides to the Contractor the responsibility of distributing Authorized Federal Supply Schedule Price Lists to all authorized sales outlets.
552.238–105	Deliveries Beyond the Contractual Period—Placing of Orders.	Use only in FSS solicitations and contracts for supplies.	This clause allows orders to be processed if they were received prior to the expiration of the contract.
552.238–106	Interpretation of Contract Requirements.	Use in all FSS solicitations and contracts.	This indicates that only written clarifications regarding interpretation of contract clauses may only be made by the Contracting Officer or his/her designated representative.
552.238–107	Export Traffic Release (Supplies).	Use in FSS solicitations and contracts for supplies, except vehicles.	This clause informs Contractors of the requirements for exporting items under the contract.
552.238–108	Spare Parts Kit	Use only in FSS solicitations and contracts for items requiring spare part kits.	This clause ensures requirements for spare part kits are understood by all parties.

No.	Name	Prescription	Description
552.238–109	Authentication Supplies and Services.	Use in Federal Supply Schedule 70 solicitations only, and only contracts awarded Special Item Numbers (SINs) associated with the Homeland Security Presidential Directive 12 (HSPD–12).	This clause outlines requirements for the Homeland Security Presidential Directive 12 (HSPD–12).
552.238–110	Commercial Satellite Communication (COMSATCOM) Services.	Use only in FSS solicitations and contracts for COMSATCOM services.	This clause provides minimum requirements for COMSATCOM services.
552.238–111	Environmental Protection Agency Registration Requirement.	Use only in FSS solicitations and contracts for supplies when items may require registration with the Environmental Protection Agency.	This clause ensures items in FSC Group 68 items (insecticides, etc.) are properly registered with EPA.

3. *Reinstated Clauses and Provisions:* Four (4) FSS-specific clauses and provisions that were removed from the GSAR as part of a previous General Services Administration Acquisition Manual (GSAM) rewrite and retained by internal GSA policy are reinstated and given new clause numbers. The clauses and provisions are reinstated into GSAR Parts 538 and 552 in order to ensure consistency and transparency. The four (4) reinstated clauses/provisions, prescriptions, and a brief description are as follows:

New No.	Previous No.	Name	Prescription	Description
552.238–75	552.212–73	Evaluation—Commercial Items (Federal Supply Schedules).	Use in FSS standing solicitations.	This provision informs Offerors that multiple awards for commercial items offered may be made, resulting in a binding contract between parties.
552.238–84	552.232–8	Discounts for Prompt Payment.	Use in all FSS solicitations and contracts.	This clause provides the rules governing early payment under the FSS contract (and resulting orders).
552.238–85	552.232–83	Contractor's Billing Responsibilities.	Use in all FSS solicitations and contracts.	This clause provides to the Contractor the requirements of billing responsibilities, particularly those associated with participating dealers.
552.238–86	552.211–78	Delivery Schedule	Use only in FSS solicitations and contracts for supplies.	This clause provides to the Offeror the requirement to address normal commercial delivery times in its offer.

4. *Revised Existing Clauses and Provisions:* Ten (10) existing FSS-specific clauses and provisions are updated to reflect current references and practices. The ten (10) updated existing clauses/provisions and a brief description of the changes are as follows:

No.	Name	Description of change
552.212–71	Contract Terms and Conditions Applicable to GSA Acquisition Commercial Items.	Updated to remove unnecessary clauses and outdated FSS clauses.
552.238–73	Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.	Prescription update to use only in FSS solicitations for electronic office equipment.
552.238–74	Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists.	Prescription updated to use in all FSS solicitations and contracts.
552.238–75	Identification of Products that have Environmental Attributes	Prescription updated to use only in FSS solicitations and contracts that contemplate items with environmental attributes.
552.238–76	Cancellation	Prescription updated to use in all FSS solicitations and contracts.
552.238–77	Industrial Funding Fee and Sales Reporting	Prescription updated to use in all FSS solicitations and contracts.
552.238–78	Price Reductions	Prescription updated to use in all FSS solicitations and contracts.
552.238–79	Scope of Contract (Eligible Ordering Activities)	Updated to reference the correct payment clause, FAR 52.232–36, Payment by Third Party.
552.238–80	Modifications	Prescription updated to use in all FSS solicitations and contracts. (i) Use Alternate I for Federal Supply Schedules that only accept eMod.
552.238–81	Examination of Records by GSA (Federal Supply Schedules)	Relocated and retitled from 552.215–71, Examination of Records by GSA (Multiple Award Schedule) as this is an FSS-specific clause.

5. *Technical Amendments:* Typographical errors are corrected and minor administrative changes are made to GSAR parts 538 and 552 (*e.g.,* renumbers existing provisions and clauses, changes ''MAS'' to ''FSS'' to be more consistent with the FAR).

A. Summary of Significant Changes From the Proposed Rule

Three respondents submitted numerous comments in response to the proposed rule. The General Services Administration has reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of these comments are addressed in the Analysis of Public Comments Section.

This final rule makes the following changes from the proposed rule:

• New Clauses and Provisions: Forty-three (43) new FSS-specific clauses and provisions were contemplated in the proposed rule for public comment.[2] The proposed rule published incorrectly stated this number as thirty-five (35) and listed forty-five (45) clauses. However, 552.238–82 (Proposed Rule), now 552.238–89 (Final Rule), Delivery Schedule was incorrectly included in the ''new'' clause list rather than the ''reinstated'' clause list. In addition, 552.238–92 *Examination of Records by GSA (Federal Supply Schedules)* was incorrectly included in the ''new'' clause list rather than the ''revised existing'' clause list. So, the correct number was forty-three (43) ''new'' FSS-specific clauses in the proposed rule. After taking into consideration public comments received from the proposed rule, thirty (30) new FSS-specific clauses and provisions are incorporated into GSAR parts 538 and 552 in the final rule. The following thirteen (13) clauses from the proposed rule are removed from the GSAR final rule:

- 552.238–85 *Significant Changes*
- 552.238–88 *Notice: Requests for Explanation or Information and Hours of Operation*
- 552.238–91 *Authorized Negotiators*
- 552.238–102 *Inspection at Destination*
- 552.238–106 *Post-Award Samples*
- 552.238–107 *Restriction on the Acceptance of Orders*
- 552.238–110 *Shipping Points*
- 552.238–111 *Contact for Contract Administration*
- 552.238–119 *Federal Excise Tax*
- 552.238–120 *Guarantee*
- 552.238–122 *Imprest Funds*
- 552.238–127 *Export Traffic Release (Vehicles)*
- 552.238–128 *Carload Shipments*

• Reinstated Clauses and Provisions: Seven (7) FSS-specific clauses and provisions were contemplated for reinstatement in the proposed rule for public comment. The proposed rule published incorrectly identified this number as six (6), because 552.238–82 (P.R.), now 552.238–90 (F.R.) Delivery Schedule was incorrectly included in the list of ''new'' FSS-specific clauses rather than the ''reinstated'' clauses. After taking into consideration public comments received from the proposed rule, four (4) FSS-specific clauses and provisions are reinstated into GSAR parts 538 and 552 in the final rule. The following three (3) clauses from the proposed rule are removed from the GSAR final rule:

- 552.238–89 *Contractor's Remittance (Payment) Address*
- 552.238–97 *Payment by Credit Card*
- 552.238–98 *Warranty*

• Revised Existing Clauses and Provisions: Nine (9) existing clauses and provisions were contemplated for revision in the proposed rule for public comment. The proposed rule published incorrectly identified this number as seven (7) clauses. However, GSAR clause 552.238–94 *Examination of Records by GSA (Federal Supply Schedules)* was incorrectly included in the list of ''new'' FSS-specific clauses rather than the ''revised existing'' clauses. In addition, GSAR clause 552.238–78 *Scope of Contract (Eligible Ordering Activities)* is revised to replace the reference to GSAR clause 552.232–79 *Payment by Credit Card,* which is redundant to FAR clause 52.232–36 *Payment by Third Party,* and is now included in the list of ''revised existing'' clauses. So, the correct number is nine (9) ''revised existing'' FSS-specific clauses from the proposed rule. After reviewing the public comments and reflecting on the content, ten (10) revised existing FSS-specific provisions and clauses are incorporated into GSAR parts 538 and 552 in the final rule. The following one (1) GSAR clause is added to the GSAR final rule because it includes references to GSAR clauses affected by this case and is amended to reflect such.

- 552.212–71 *Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items*

B. Analysis of Public Comments

GSA received numerous comments from three respondents in response to the proposed rule.[3] All comments filed were considered. A discussion of the comments and the changes made to the final rule as a result of those comments is provided as follows:

The comments received covered several points and topics. In order to provide clarification and to better respond to the issues raised, the respondents' comments are organized into the following categories: (1) General comments regarding the overall rule; (2) Comments on specific provisions and clauses in the rule; (3) Comments regarding the Paperwork Reduction Act and Regulatory Flexibility Act; and (4) Comments outside the scope of the rule.

1. General Comments

The following general comments were received in response to the proposed rule:

Respondent: There is value in GSA maintaining a system of Acquisition and Instruction Letters to the GSAR as this is a mechanism to provide transparency.

GSA Response: GSA will continue to maintain a system of Acquisition Letters and Instructional Letters to supplement the GSAR. However, the goal is to implement such policy letters into the GSAM/GSAR for transparency and policy guidance. No changes were made to the final rule as a result of this comment.

Respondent: GSA should initiate a Federal Acquisition Regulation (FAR) case to delete all references to ''Federal Supply Schedule (FSS)'' and replace with the term ''GSA Multiple Award Schedule (MAS)'' or ''GSA Schedule.''

GSA Response: ''Federal Supply Schedule'' is being incorporated in the GSAR to achieve consistency with the FAR, which does not frequently use the term ''Multiple Award Schedule (MAS).'' Until MAS is changed in the FAR, the GSAR will use the term Federal Supply Schedule.

Respondent: GSA has not performed a detailed analysis of nor obtained a baseline understanding of how the proposed policies were historically administered and implemented across all Schedules and the GSA FSS contracting officer community.

GSA Response: GSA has performed an in-depth analysis of the clauses proposed in this rule and has

[2] The proposed rule at 79 FR 54126 notes thirty-five (35) new clauses and provisions in the text at Paragraph I.2, but lists forty-five (45) new clauses and provisions in the table. One (1) of the clauses listed in the proposed rule table, ''Delivery Schedule'', was actually previously part of the GSAR and is now reinstated; this is now reflected in Paragraph II.3 of the final rule. One (1) of the clauses listed in the proposed rule table, ''Examination of Records by GSA'', actually existed in the GSAR and is moved; this is now reflected in Paragraph II.4 of the final rule.

[3] See GSAR Case 2013–G502; Docket 2014–0009; Sequence 1 [79 FR 54125 (September 10, 2014)].

determined that the clauses are still used in FSS contracts. Adding them to the GSAR increases clarity for FSS contracting officers and contractors to understand when each clause should be used. However, based on comments received in response to the proposed rule, some clauses are revised to address the specific comments related to outdated policies. No changes were made to the final rule as a result of this comment.

Respondent: GSA should reissue the proposed rule, covering only clauses currently included in all GSA Schedule contracts and which are being incorporated into the GSAR without change.

GSA Response: This rule only incorporates clauses currently in use by the FSS program through internal agency policy (*e.g.,* acquisition letters). With the exception of minor administrative edits, different numbers, and slightly different names to improve clarity, the substances of the clauses are the same as those currently in FSS contracts and are being incorporated into the GSAR without change.

Respondent: Additional time should be allocated to interested parties to comment on the proposed language, discuss specific issues with each of the legacy policies, and the implications on current operations.

GSA Response: GSA extended the comment period to provide additional time for interested parties to provide comments (See 79 FR 64356).

Respondent: The respondent requested clarity on the number of new FSS-specific clauses currently in FSS solicitations that will be incorporated into the GSAR.

GSA Response: The final rule incorporates 33 new FSS-specific clauses.

2. Comments on Specific Provisions and Clauses

GSAR Text Amended as a Result of Public Comments

Respondent: The proposed rule adds GSAR clause *Evaluation—Commercial Items* including an alternate.

A clause entitled *Evaluation—Commercial Items (Multiple Award Schedule* (552.212–73) has been in the MAS contract since 1997.

Alternate I, however, is new and a significant change to the way resellers' offers are now evaluated. Further, the provisions of the clause are inconsistent with MAS contracting policy and procedures. Alternate I is prescribed for use in non-standing Schedules. At a minimum the rule should explain what a non-standing schedule is. It is not a concept currently in use.

GSA Response: Concur. The alternate version of the provision is removed from the GSAR text final rule. Additionally, instructions for a single-award Federal Supply Schedule which has a beginning and end date, and also known as a non-standing solicitation, are included in the new GSAR provision *Cover Page for Worldwide Federal Supply Schedules,* which instructs contracting officers to insert a beginning and end date for non-standing solicitations.

Respondent: GSAR clause *Notice Request for Explanations or Information and Hours of Operation* appears duplicative and/or unnecessary. Information for offerors to submit questions is already included in the SF 1449.

GSA Response: Concur. This clause is duplicative of the Standard Form 1449 and is therefore deleted from the GSAR text of the final rule.

Respondent: What is the purpose of including a unique inspection clause, such as the proposed GSAR clause *Inspection,* in MAS contracts? The commercial item clause has an inspection provision and an alternate for use in service contracts.

GSA Response: Concur. This clause was previously used specifically for stock and special order contracts and does not belong in GSAR part 538. The clause is deleted from the GSAR text final rule.

Respondent: The following GSAR clauses are unique to an individual procurement. GSA should consider removing them from the GSAR and including them in a document or database that is easier to change to keep pace with federal and industry changes.

A. Post-award Samples prescribes a samples clause applicable only to carpet.

B. Export Traffic Release (Vehicles) prescribes a clause applicable only to vehicles.

C. Restriction on the Acceptance of Orders prescribes a clause restricting the receipt of orders from Navy ships that is only applicable to copiers, supplies and services.

D. Federal Excise Taxes prescribes an Excise Tax applicable only to tires and tubes.

E. Carload Shipments prescribes a clause applicable only in contracts for vehicles.

GSA Response: Concur. The prescriptions and associated clauses are deleted from the GSAR text final rule.

Respondent: GSA's proposed clause *Contractor's Remittance (Payment) Address* provision appears to be duplicative or in conflict with FAR 12.303 which requires the remittance address be addressed in Block 18B of SF1449.

GSA Response: Concur. This clause is deleted from the GSAR text of the final rule.

Respondent: Recommend GSA review FAR 32.1108 as it applies to GSA's proposed GSAR clause *Payment by Credit Card* and the ''third party'' payment clause to ensure the proposed clause is not inconsistent with or in conflict with FAR.

GSA Response: Concur. The proposed GSAR clause *Payment by Credit Card* is redundant to FAR clause 52.232–36 and is removed from the GSAR text final rule. Additionally, GSAR clause *Scope of Contract (Eligible Ordering Activities)* is amended as a result of this comment.

Respondent: GSAR clauses *Performance Oriented Packaging; Parts and Service;* and *Spare Parts,* seem impracticable to negotiate at the schedule contract level. GSA should consider deleting these clauses from the GSAR or including instructions for implementing the provisions at the task order level.

GSA Response: Concur. The clauses are maintained at the contract level, but are revised to require submission of the required information at the task order level. GSAR text is amended as a result of this comment.

Respondent: GSAR clause *Authorized Negotiators* appears to be duplicative of FAR 52.203–2 provision which is mandatory for all FSS contracts. This clause and GSAR clause *Contact for Contract Administration* should use a designated URL to revise POC information and feed this information to associated contract systems.

GSA Response: Both clauses are removed from the GSAR text final rule. The agency will take this suggestion into consideration when updating applicable policy in the future.

Respondent: Vendors frequently use multiple carriers for shipments. It is therefore not feasible to specify a specific carrier at the Schedule contract level as required in GSAR clause *Shipping Points.*

GSA Response: Concur. This clause is removed from the GSAR text final rule.

Respondent: GSA should insert a statement at the end of GSAR clause *Significant Changes* that prior to refreshing a solicitation to incorporate significant changes, existing contractors should be given no less than 60 days to review and comment or implement the provision.

GSA Response: This clause is removed from the GSAR text final rule. FAS provides offerors with a 30-day notice when a solicitation is amended

from a previous version to a new version.

Respondent: The GSAR clause *Guarantee* is applicable only to major appliances. GSA should consider going to standard commercial warranty in all MAS schedules as provided for in the proposed *Warranty* clause and FAR clause 52.212–4 *Contract Terms and Conditions—Commercial Items.*

GSA Response: Concur. This clause is removed from the GSAR text final rule. The standard commercial warranty applies to all FSS contracts.

Respondent: GSA's proposed clause *Warranty* appears to be duplicative or in conflict with FAR 52.212–4(o) clause. Also, COs are required to make a determination (D&F) in the Acquisition Plan IAW FAR 46.703 *prior* to including a warranty clause.

GSA Response: Concur. This clause is removed from the GSAR text final rule. The standard commercial warranty applies to all FSS contracts.

Respondent: Recommend GSA delete proposed GSAR clause *Imprest Funds (Petty Cash)* since the use of imprest funds are established by individual agencies. Also FAR 13.305–3 establishes Conditions for Use of Imprest Funds including a limit of $500.

GSA Response: Concur. This clause is removed from the GSAR text final rule.

GSAR Text not Amended as a Result of Public Comments

Respondent: GSAR clause *Evaluation—Commercial Items (Federal Supply Schedules)* appears to be duplicative and/or in conflict with FAR. ''Multiple awards'' and basis of awards are already addressed under FAR 52.212–1(g) and (h). Also the phrase ''at the lowest overall cost'' implies that there is a head-to-head price competition that is not applicable to schedule offers. Also paragraph (b) appears to duplicate FAR 52.212–2(c). Withdrawals are addressed under FAR 52.212–1.

GSA Response: As stated above, Alternate I of GSAR provision *Evaluation—Commercial Items (Federal Supply Schedules)* is deleted from the GSAR text of the final rule. However, the purpose of the basic provision is not duplicative and does not conflict with the FAR provision. The FAR provision the respondent cites, 52.212–1, is intended to provide instructions to offerors, whereas GSAR provision *Evaluation—Commercial Items* is intended to supplement FAR provision 52.212–2.

Respondent: Should the proposed GSAR clause *Vendor Managed Inventory* be included in all solicitations? This clause typically applies only in Schedule 51V and perhaps Schedule 75.

GSA Response: This clause is not prescribed for all solicitations. It is only included in solicitations and contracts for supplies when a VMI Program is contemplated.

Respondent: Delivery prices and terms are a matter of FSS contract negotiations, which should be based on a contractor's commercial practices. Mandating specific delivery terms and pricing, such as GSAR clauses *Delivery Prices Overseas* and *Delivery Prices,* will result in schedule contractors having to deviate from their standard commercial practices. Customization of these terms to meet GSA specific requirements could necessitate wholesale changes to contractor shipping and delivery processes.

GSA Response: GSAR clauses *Delivery Prices Overseas* and *Delivery Prices* do not state specific delivery terms or pricing. The clauses require contractors to notify the Government if they cannot deliver within the specified locations agreed to up-front. Also, the clauses are essential to FSS contracts and will ensure a consistent basis for delivery terms across the FSS program.

Respondent: The respondent listed a number of provisions and clauses that were not included in the proposed rule, asking if the clauses not included in this rule would be deleted entirely or published for comments and an IRFA analysis conducted to determine the costs and economic impact on small businesses.

GSA Response: The absence of existing provisions and clauses in the final rule does not necessarily mean they are being deleted from FSS solicitations. Any attempt to incorporate new provisions and clauses will be addressed in a separate GSAR case and an IRFA analysis will be conducted at such time. GSA performed an in-depth analysis of all FSS provisions and clauses and after careful consideration decided to only include the most-used, non-complex clauses in this GSAR case.

Respondent: Is there any plan by FAS to ensure streamlined solicitations are in compliance with FAR 12.603 for Commercial Items?

GSA Response: This case streamlines the solicitation process and ensures the appropriate terms of the FAR commercial items requirements are incorporated into FSS solicitations and contracts. Also, FSS contracts already include FAR clause 52.212–5 and designate the appropriate clauses and provisions.

Respondent: There are already FAR provisions/clauses to address ''English language'' and U.S. ''dollar'' requirements.

GSA Response: The ''English language'' and U.S. ''dollar'' requirements are included in the instructions for competitive acquisitions (FAR clause 52.215–1). FSS uses commercial item acquisition instructions (52.212–1) and therefore must specify this requirement as a separate clause.

Respondent: GSA's proposed GSAR clause *Contractor's Billing Responsibilities* appears to be in conflict with FAR. How are dealers permitted to bill ordering activities if payments are tied to the contractor's EFT in SAM?

GSA Response: The FAR does not currently provide coverage for the contractor's relationship with their participating dealers. The terms of EFT, as it relates to the SAM registration, are covered by FAR clause 52.204–7 and only apply to the prime contractor relationship.

Respondent: GSA's proposed clause *Deliveries Beyond the Contractual Period—Placing of Orders* appears to be duplicative or inconsistent with FAR 52.216–22(d). The prescription calls for use in all FSS solicitations and contracts for supplies. However, the clause itself says in accordance with clause *Scope of Contract (Eligible Ordering Activities)* which only applies to ''solicitations and contracts which contain products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack.'' So there appears to be inconsistency here. Also which products/services has DHS determined are *approved* for used by 'eligible ordering activities''? In other words, which solicitations are COs supposed to include the *Scope of Contract (Eligible Ordering Activities)* clause? How or when is that determination to be made?

GSA Response: GSAR clause *Deliveries Beyond the Contractual Period—Placing Orders* is not inconsistent or duplicative of FAR 52.216–22(d). This clause supplements the FAR by providing Contracting Officers with specific instructions for such situations.

Subpart 538.7004 is revised in GSAR case 2010–G511 *Purchasing by Non-Federal Entities,* 81 FR 36425 effective July 6, 2016, to state ''The contracting officer shall insert the clause, Scope of Contract (Eligible Ordering Activities), in solicitations and contracts for all Federal Supply Schedules.''

In December 2006, DHS Memo 06–11884, stipulated that all goods and services available on GSA Federal Supply Schedules qualified as goods

and services to be used to facilitate recovery from a major disaster declared by the President under the Robert T Stafford Disaster Relief and Emergency Act, or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack. The memo was signed by the then Secretary of Homeland Security Michael Chertoff.

3. Comments on Paperwork Reduction Act and Regulatory Flexibility Act

Respondent: Please address several collections of information, mandated for submittal in all FSS solicitations, which do not appear to be listed in OMB's current Inventory of Approved Information Collections on reginfo.gov as part of the IRFA analysis.

GSA Response: The IRFA describes the impact of the proposed rule on small entities. It does not break the clauses down individually. GSAR case 2013–G502, which incorporates a number of provisions and clauses currently in use in FSS solicitations and contracts, includes an IRFA that took into consideration all of the applicable clauses and provisions that may impact small entities. The requirements described in this comment are not part of the provisions and clauses on which this rule seeks feedback. The collection requirements included in this comment are included in OMB Control 3090–0163. No changes were made to the rule as a result of this comment.

Respondent: The methodology for estimating Paperwork Burdens is flawed resulting in a significant underestimation of the burden imposed by the rule.

GSA Response: GSA has outlined its methodology for calculating the burden estimates in the information collection supporting statement. Since no specific information on how the methodology is flawed was provided, no changes were made to the rule as a result of this comment.

Respondent: Clarify what information collection requirements are being referred to in GSAR clause *Information Collection Requirements* and comment on whether this provision would be accurate in all FSS solicitations as proposed.

GSA Response: The information collection associated with this clause, OMB control number 3090–0163, is for information specific to a contract or contracting action, not required by regulation. The supporting statement for this information collection notes it is ''associated with GSA's information collection requirements contained in solicitations issued in accordance with the Uniform Contract Format under FAR Part 14, Sealed Bidding (see GSAR 514.201–1); FAR Part 15, Contracting by Negotiation (see GSAR 515.204–1); and solicitations under FAR Part 12, Acquisition of Commercial Items, when issued in accordance with the policy and procedures of FAR Part 14 and FAR Part 15 (see GSAR 512.301). This includes information collection requirements found in GSA Federal Supply Schedule (FSS) solicitations.''

4. Comments Outside the Scope of the Rule

Respondent: There is no GSAR clause that mandates contractors be subjected routinely to Contractor Assistance Visits (CAV). I recommend GSA create a clause to indicate it is mandatory, conduct the IRFA analysis of cost burden and impact on small businesses, and the CAV requirements.

GSA Response: This suggestion is outside the scope of the current rule as this rule focuses on publishing non-complex provisions and clauses, updating administrative matters, and restructuring the GSAR to be more consistent with the FAR in terms of the FSS program. Contractor Assessments are conducted under GSAR clause *Examination of Records by GSA (Federal Supply Schedules).* GSA examines the cost burden and impact of CAVs on vendors in the PRA of the GSAR *Examination of Records* clause.

Respondent: There are significant clauses covered by the rule that should be the subject of a separate rule-making, such as the *Price Reduction* clause. Including such provisions in this massive collection of clauses does not offer the opportunity to propose changes in this important area.

GSA Response: The *Price Reductions* clause is not being changed as a result of this rule. Comments on the substance of this clause are considered outside the scope of this rule. No changes were made to the rule as a result of this comment.

Respondent: The current GSAR does not contain the proposed GSAR Clause *Discounts for Prompt Payment* referenced in the proposed rule. The proposed clause should be included for public comment in a subsequent rulemaking. The clause appears complicated, and its purpose is not clear. Prompt payment discounts should be disclosed in the CSPF. Whether the contractor offers them to the government, or the contracting officer accepts them, should be subject to negotiation. The Government can advise its contracting staff of factors to consider without adding another clause to the contract.

GSA Response: Clause *Discounts for Prompt Payment (Federal Supply Schedules)* was previously included in the GSAR at 552.232–8. The clause is unchanged from the previous version and is now reinstated under 538.273 and 552.238–84. No changes were made to the rule as a result of this comment.

Respondent: Proposed GSAR prescription 538.273(d) directs use of the clause *Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists,* which requires distribution of a paper price list. This is an opportunity for GSA to eliminate a requirement in light of the extensive electronic reporting required of contractors.

GSA Response: GSAR clause *Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists* is not being revised by this rule; therefore, this comment is outside the scope of this case. No changes were made to the rule as a result of this comment.

Respondent: The text of GSAR clause *Cancellation,* which ''provides instructions to the Offeror on canceling its FSS contracts,'' should be corrected to reflect that the clause is intended for use by contractors only. Additional text in the clause, which indicates that the Government will not reimburse the minimum guarantee if the contractor elects to cancel the contract, violates FAR 16.501–2(b)(3) that the Government's ''obligation'' in IDIQ contracts is ''to the minimum quantity specified in the contract''.

GSA Response: The text of the clause questioned is not being revised; therefore, the comments are not within the scope of this case. However, GSA will take the comments into consideration for potentially addressing in a separate case. No changes were made to the rule as a result of this comment.

Respondent: GSA's *Examination of Records by GSA (Federal Supply Schedules)* clause, appears to be in conflict with FAR 52.212–4 Alternate I's ''access to records,'' which is limited to service contracts and restricts access to timecards to verify labor hours charged and, in the case of a cost-reimbursable T&M contract, invoices to certify material costs. Also, recommend addressing the ''Report Card'' by COs into CPARs and the cost to the Government for the IOAs travel to and preparation for visits with contractors.

GSA Response: The text of the clause questioned is not being revised; therefore, the comments are not within the scope of this case. However, GSA will take the comments into consideration for potentially addressing in a separate case. No changes were

made to the rule as a result of this comment.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This final rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule will incorporate a number of provisions and clauses that are currently in use in FSS solicitations and contracts and most contractors are familiar with and are currently complying with these practices. Although this rule does not have a significant impact on a substantial number of small entities, GSA prepared an Initial Regulatory Flexibility Analysis (IRFA) in conjunction with the proposed rule. As a result, GSA has also prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

The FRFA is summarized as follows:

This FRFA has been prepared consistent with the criteria of 5 U.S.C. 604.

There are approximately 14,674[4] FSS contracts that are affected by this change. Of these, approximately eighty percent (11,739) of FSS contracts are held by small businesses. The rule is unlikely to affect small businesses awarded GSA FSS contracts as it implements a number of provisions and clauses currently in use in FSS solicitations and contracts, yet not vetted via public comment. The information collected is used by FAS to evaluate vendors' offers, ordering activities when placing orders against the contract, and other FSS vendors to conduct market research when submitting proposals. Therefore, this rule does not pose any new projected reporting, recordkeeping, or additional compliance requirements. Bringing these regulations into the GSAR consolidates all regulations into one area, allowing for any future changes to receive public comment.

There are a total of 31 Schedules, with 14 possessing an array of Special Item Numbers (SINs) set-aside for small businesses. Overall, small businesses have benefited from GSA providing access to the Federal marketplace via the Pre-award phase (Pathway to Success), the Post-award phase (New Contractor Orientation), and Contractor Assessments. FSS contracts are negotiated as volume purchase agreements, with generally very favorable pricing. The ability of small businesses to receive awards under the FSS Program has enabled them to grow in the Federal marketplace as well as realize significant cost savings.

There were no comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the rule. The Regulatory Secretariat will submit a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the Regulatory Secretariat.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule implements a number of provisions and clauses currently in use in FSS solicitations and contracts that contain information collection requirements. The requirements are not new, but have not previously been approved by OMB. The information collected is used by FAS to evaluate vendors' offers, ordering activities when placing orders against the contract, and other FSS vendors to conduct market research when submitting proposals.

The annual total public reporting burden for this collection of information is estimated to be 38,674 total hours ($1,819,998.44), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Annual reporting burdens include the estimated respondents with one (1) submission per respondent multiplied by preparation hours per response to get the total response burden hours. The estimated cost of $47.06 ($34.54 + $12.52) per hour is applied to the burden hours based on the task being accomplished by mid-level contractor personnel equivalent to a GS–12, Step 5 salary (Base Pay and Rest of U.S. Locality Pay) (Salary Table 2018–GS, Effective January 2018), with fringe of 36.25% (OMB Memo M–08–13). The estimated burden to the public for the below clauses are as follows:

The reinstated GSAR clause 552.238–84 *Discounts for Prompt Payment* requires the offeror to provide the Government a discount for early payment, if applicable.

Respondents: 14,674.
Responses per respondent: 1.
Total annual responses: 14,674.
Preparation hours per response: 1.0 (1 hr.).
Total response burden hours: 14,674.
Cost per hour: $47.06
Estimated cost burden to the public: $690,558.44

The new GSAR clause 552.238–87 *Delivery Prices* requires the offeror to identify the intended geographic area(s)/countries/zones that are to be covered.

Respondents: 8,000.
Responses per respondent: 1.
Total annual responses: 8,000.
Preparation hours per response: .50 (30 minutes).
Total response burden hours: 4,000.
Cost per hour: $47.06
Estimated cost burden to the public: $188,240.00

The new GSAR clause 552.238–95 *Separate Charge for Performance Oriented Packaging* requires the offeror to list any separate charge for preservation, packaging, packing and marking, and labeling of domestic and overseas HAZMAT surface shipments.

Respondents: 8,000.
Responses per respondent: 1.
Total annual responses: 8,000.
Preparation hours per response: .50 (30 minutes).
Total response burden hours: 4,000.
Cost per hour: $47.06.
Estimated cost burden to the public: $188,240.00.

The new GSAR clause 552.238–96 *Separate Charge for Delivery within Consignee's Premises* requires the offeror to list any separate cost for shipping when the delivery is within the consignee's premises (inclusive of items that are comparable in size and weight).

Respondents: 8,000.
Responses per respondent: 1.
Total annual responses: 8,000.
Preparation hours per response: .50(30 minutes).
Total response burden hours: 4,000.
Cost per hour: $47.06.
Estimated cost burden to the public: $188,240.00.

The new GSAR clause 552.238–97 *Parts and Service* requires the offeror to include in the price list, the names and addresses of all supply and service points maintained in the geographic area in which the offeror will perform, whether or not a complete stock of repair parts for items offered is carried

[4] FY18 Active Schedule contract holders.

at that point, and whether or not mechanical service is available.

Respondents: 8,000.
Responses per respondent: 1.
Total annual responses: 8,000.
Preparation hours per response: .50 (30 minutes).
Total response burden hours: 4,000.
Cost per hour: $47.06.
Estimated cost burden to the public: $188,240.00.

The new GSAR clause 552.238–99 *Delivery Prices Overseas* requires the offeror to identify the intended geographic area(s)/countries/zones which are to be covered.

Respondents: 8,000.
Responses per respondent: 1.
Total annual responses: 8,000.
Preparation hours per response: .50 (30 minutes).
Total response burden hours: 4,000.
Cost per hour: $47.06.
Estimated cost burden to the public: $188,240.00.

The new GSAR clause 552.238–111 *Environmental Protection Agency Registration Requirement* requires the offeror to list the manufacturer's and/or distributor's name and EPA Registration Number for each item requiring registration with the EPA.

Respondents: 8,000.
Responses per respondent: 1.
Total annual responses: 8,000.
Preparation hours per response: .50 (30 minutes).
Total response burden hours: 4,000.
Cost per hour: $47.06.
Estimated cost burden to the public: $188,240.00.

The reinstated GSAR clause 552.238–85 *Contractor's Billing Responsibilities* contains a recordkeeping requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). The clause provides for the contractor to require all dealers participating in the performance of the contract to agree to maintain certain records on sales made under the contract on behalf of the contractor. However, it does not add burden to what is already estimated for GSAR clause 552.238–80 *Industrial Funding Fee and Sales Reporting* under OMB Control Number 3090–0121 *Industrial Funding Fee and Sales Reporting.*

GSA solicited public comments on this information collection requirement at the proposed rule stage. In response, three public comments were received and are addressed in Section *B. Analysis of Public Comments.* GSA will submit to OMB a request to review and approve this new information collection requirement. For a copy of the information collection documents, contact the Regulatory Secretariat by mail at 1800 F Street NW, Washington, DC 20405, or by phone at 202–501–4755. Please cite OMB Control Number 3090–0303, (GSAR) Administrative Changes; GSAR Case 2013–G502, in all correspondence.

List of Subjects in 48 CFR Parts 501, 515, 538, and 552

Government procurement.

Jeffrey Birch,

Acting Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

For the reasons described in the preamble, GSA amends 48 CFR parts 501, 515, 538, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 501, 515, 538, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

■ 2. Amend section 501.106 in the table by—
■ a. Revising the entry for ''538.273(a)(1)'' to read ''538.273'' and revising the OMB control number;
■ b. Removing the entries for ''538.273(a)(3)'' and ''538.273(b)(1)'';
■ c. Revising the GSAR references ''552.238–70'', ''552.238–72'', 552.238–74'', and ''552.238–81'' to read ''552.238–73'', ''552.238–78'', ''552.238–80'', and ''552.238–82'', respectively;
■ d. Adding in numerical sequence entries for ''552.238–84'', ''552.238–85'', ''552.238–87'', ''552.238–95'', ''552.238–95'', ''552.238–97'', ''552.238–99'', and ''552.238–111''.

The revision and additions read as follows:

501.106 OMB approval under the Paperwork Reduction Act.

GSAR reference	OMB control No.
* * * * *	
538.273	3090–0250 3090–0262 3090–0121 3090–0303 3090–0306
* * * * *	
552.238–73	3090–0250
552.238–78	3090–0262
552.238–80	3090–0121 3090–0306
552.238–82	3090–0302
552.238–84	3090–0303
552.238–85	3090–0121 3090–0306
552.238–87	3090–0303
552.238–95	3090–0303
552.238–96	3090–0303
552.238–97	3090–0303
552.238–99	3090–0303
552.238–111	3090–0303
* * * * *	

PART 515—CONTRACTING BY NEGOTIATION

515.209–70 [Amended]

■ 3. Amend section 515.209–70 by removing the subheading ''Clause for Multiple Award Schedules'' and paragraphs (c) and (d).

515.408 [Amended]

■ 4. Amend section 515.408 by—
■ a. Removing from paragraphs (a)(2), (b) introductory text, and (c) introductory text ''basic clause 552.238–74'' and adding ''basic clause 552.238–80'' in its place;
■ b. Removing from paragraph (c) Figure 515.4 ''clause at 552.238–75'' and adding ''clause at 552.238–81'' in its place; and
■ c. Removing from paragraph (d) ''basic clause 552.238–74'' and adding ''basic clause 552.238–80'' in its place.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 5. Amend section 538.270 by revising the section heading to read as follows:

538.270 Evaluation of Federal Supply Schedule (FSS) offers.

* * * * *

■ 6. Amend section 538.271 by—
■ a. Revising the section heading;
■ b. Removing from paragraph (a) ''MAS awards'' and adding ''FSS awards'' in its place; and
■ c. Removing from paragraph (b) ''MAS contract'' and adding ''FSS contract'' in its place.

The revision reads as follows:

538.271 FSS contract awards.

* * * * *

■ 7. Amend 538.272 by—
■ a. Revising the section heading;
■ b. Removing from paragraph (a) ''basic clause 552.238–74'' and adding ''basic clause 552.238–80'' in its place; and
■ c. Removing from paragraph (b) ''Alternate I of 552.238–75'' and adding ''Alternate I of 552.238–81'' in its place.

The revision reads as follows:

538.272 FSS price reductions.

* * * * *

■ 8. Revise section 538.273 to read as follows:

538.273 FSS solicitation provisions and contract clauses.

(a) As prescribed in this paragraph, insert the following provisions in the beginning of FSS solicitations:

(1) 552.238–70, Cover Page for Worldwide Federal Supply Schedules. Use in all FSS solicitations. Use Alternate I for single award Federal Supply Schedules.

(2) 552.238–71, Notice of Total Small Business Set-Aside. Use in FSS solicitations containing special item numbers (SINs) that are set aside for small business.

(3) 552.238–72, Information Collection Requirements. Use in all FSS solicitations.

(b) As prescribed in this paragraph, insert the following clause and provision as an addendum to 52.212–1, Instructions to Offerors—Commercial Items:

(1) 552.238–73, Identification of Electronic Office Equipment Providing Accessibility for the Handicapped. Use only in FSS solicitations for electronic office equipment.

(2) 552.238–74, Introduction of New Supplies/Services (INSS). Use only in FSS solicitations allowing the introduction of new supplies/services. Note: GSA Form 1649, Notification of Federal Supply Schedule Improvement, may be required if revising a Special Item Number (SIN).

(c) As prescribed in this paragraph, insert the following provisions as an addendum to 52.212–2, Evaluation—Commercial Items:

(1) 552.238–75, Evaluation—Commercial Items (Federal Supply Schedules). Use in FSS standing solicitations.

(2) 552.238–76, Use of Non-Government Employees to Review Offers. Use only in FSS solicitations when non-government employees may be utilized to review solicitation responses.

(d) As prescribed in this paragraph, insert the following clauses as an addendum to Clause 52.212–4, Contract Terms and Conditions–Commercial Items:

(1) 552.238–77, Submission and Distribution of Authorized FSS Price Lists. Use in all FSS solicitations and contracts.

(2) 552.238–78, Identification of Products that have Environmental Attributes. Use only in FSS solicitations and contracts that contemplate items with environmental attributes.

(3) 552.238–79, Cancellation. Use in all FSS solicitations and contracts.

(4) 552.238–80, Industrial Funding Fee and Sales Reporting. Use Alternate I for Federal Supply Schedules with Transactional Data Reporting requirements. Clause 552.238–75 Alternate I should also be used when vendors agree to include clause 552.238–74 Alternate I in the contract.

(5) 552.238–81, Price Reductions. Use Alternate I for Federal Supply Schedules with Transactional Data Reporting requirements. This alternate clause is used when vendors agree to include clause 552.238–74 Alternate I in the contract.

(6) 552.238–82, Modifications (Federal Supply Schedules). Use in all FSS solicitations and contracts.

(i) Use Alternate I for Federal Supply Schedules that only accept eMod.

(ii) Use Alternate II for Federal Supply Schedules with Transactional Data Reporting requirements. This alternate clause is used when vendors agree to include clause 552.238–74 Alternate I in the contract.

(7) 552.238–83, Examination of Records by GSA (Federal Supply Schedules). Use in all FSS solicitations and contracts. With the Senior Procurement's Executive approval, the contracting officer may modify this clause to provide for post-award access to and the right to examine records to verify that the pre-award/modification pricing, sales or other data related to the supplies or services offered under the contract which formed the basis for the award/modification was accurate, current, and complete. The following procedures apply:

(i) Such a modification of the clause must provide for the right of access to expire 2 years after award or modification.

(ii) Before modifying the clause, the contracting officer must make a determination that absent such access there is a likelihood of significant harm to the Government and submit it to the Senior Procurement Executive for approval.

(iii) The determinations under paragraph (9)(ii) must be made on a schedule-by-schedule basis.

(8) 552.238–84, Discounts for Prompt Payment. Use in all FSS solicitations and contracts.

(9) 552.238–85, Contractor's Billing Responsibilities. Use in all FSS solicitations and contracts.

(10) 552.238–86, Delivery Schedule. Use only in FSS solicitations and contracts for supplies.

(11) 552.238–87, Delivery Prices. Use in all FSS solicitations and contracts.

(12) 552.238–88, GSA *Advantage*!®. Use in all FSS solicitations and contracts except the Department of Veterans Affairs Federal Supply Schedules.

(13) 552.238–89, Deliveries to the U.S. Postal Service. Use only in FSS solicitations and contracts for mailable articles when delivery to a U.S. Postal Service (USPS) facility is contemplated.

(14) 552.238–90, Characteristics of Electric Current. Use only in FSS solicitations and contracts when the supply of equipment which uses electrical current is contemplated.

(15) 552.238–91, Marking and Documentation Requirements for Shipping. Use only in FSS solicitations and contracts for supplies when the need for outlining the minimum information and documentation required for shipping is contemplated.

(16) 552.238–92, Vendor Managed Inventory (VMI) Program. Use only in FSS solicitations and contracts for supplies when a VMI Program is contemplated.

(17) 552.238–93, Order Acknowledgement. Use only in FSS solicitations and contracts for supplies.

(18) 552.238–94, Accelerated Delivery Requirements. Use only in FSS solicitations and contracts for supplies.

(19) 552.238–95, Separate Charge for Performance Oriented Packaging (POP). Use only in FSS solicitations and contracts for items defined as hazardous under Federal Standard No. 313.

(20) 552.238–96, Separate Charge for Delivery within Consignee's Premises. Use only in FSS solicitations and contracts for supplies when allowing offerors to propose separate charges for deliveries within the consignee's premises.

(21) 552.238–97, Parts and Service. Use in all FSS solicitations and contracts.

(22) 552.238–98, Clauses for Overseas Coverage. Use only in FSS solicitations and contracts when overseas acquisition is contemplated. The following clauses and provisions shall also be inserted in full text, when applicable.

(i) 52.214–34 Submission of Offers in the English Language.

(ii) 52.214–35 Submission of Offers in U.S. Currency.

(iii) 552.238–90 Characteristics of Electric Current.

(iv) 552.238–91 Marking and Documentation Requirements Per Shipment.

(v) 552.238–97 Parts and Service.

(vi) 552.238–99 Delivery Prices Overseas.

(vii) 552.238–100 Transshipments.

(viii) 552.238–101 Foreign Taxes and Duties.

(ix) 52.247–34 FOB Destination.

(x) 52.247–38 FOB Inland Carrier, Country of Exportation.

(xi) 52.247–39 FOB Inland Point, Country of Importation.

(23) 552.238–99, Delivery Prices Overseas. Use only in FSS solicitations and contracts when overseas acquisition is contemplated.

(24) 552.238–100, Transshipments. Use only in FSS solicitations and contracts when overseas acquisition is contemplated.

(25) 552.238–101, Foreign Taxes and Duties. Use only in FSS solicitations and contracts when overseas acquisition is contemplated.

(26) 552.238–102, English Language and U.S. Dollar Requirements. Use in all FSS solicitations and contracts.

(27) 552.238–103, Electronic Commerce. Use in all FSS solicitations and contracts except the Department of Veterans Affairs Federal Supply Schedules.

(28) 552.238–104, Dissemination of Information by Contractor. Use in all FSS solicitations and contracts.

(29) 552.238–105, Deliveries Beyond the Contractual Period—Placing of Orders. Use only in FSS solicitations and contracts for supplies.

(30) 552.238–106, Interpretation of Contract Requirements. Use in all FSS solicitations and contracts.

(31) 552.238–107, Export Traffic Release (Supplies). Use in FSS solicitations and contracts for supplies, except vehicles.

(32) 552.238–108, Spare Parts Kit. Use only in FSS solicitations and contracts for items requiring spare part kits. This information is to be specified at the order level.

(33) 552.238–109, Authentication Supplies and Services. Use in Federal Supply Schedule 70 solicitations only, and only contracts awarded Special Item Numbers (SINs) associated with the Homeland Security Presidential Directive 12 (HSPD–12).

(34) 552.238–110, Commercial Satellite Communication (COMSATCOM) Services. Use only in FSS solicitations and contracts for COMSATCOM services.

(35) 552.238–111, Environmental Protection Agency Registration Requirement. Use only in FSS solicitations and contracts for supplies when items may require registration with the Environmental Protection Agency.

538.7001 [Amended]

■ 9. Amend section 538.7001 by removing from the definition ''Ordering activity'' ''(see 552.238–78)'' and adding ''(see 552.238–113)'' in its place.

538.7004 [Amended]

■ 10. Amend section 538.7004 by—

■ a. Removing from paragraph (a) ''the clause at 552.238–77'' and adding ''the clause at 552.238–112'' in its place;

■ b. Removing from paragraph (b) ''the clause at 552.238–78'' and adding ''the clause at 552.238–113'' in its place; and

■ c. Removing from paragraph (c) ''the clause at 552.238–79'' and adding ''the clause at 552.238–114'' in its place.

PART 552–SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 11. Amend section 552.212–71 by revising the date of the clause and paragraph (b) to read as follows:

552.212–71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.

* * * * *

Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items (May 2019)

* * * * *

(b) *Clauses.*

552.203–71 Restriction on Advertising
552.211–73 Marking
552.215–70 Examination of Records by GSA
552.215–72 Price Adjustment-Failure to Provide Accurate Information
552.219–70 Allocation of Orders-Partially Set-Aside Items
552.228–70 Workers' Compensation Laws
552.229–70 Federal, State, and Local Taxes
552.232–23 Assignment of Claims
552.232–71 Adjusting Payments
552.232–72 Final Payment
552.232–73 Availability of Funds
552.232–78 Payment Information
552.237–71 Qualifications of Employees
552.242–70 Status Report of Orders and Shipments
552.246–76 Warranty of Pesticides

* * * * *

■ 12. Amend section 552.212–72 by revising the date of the clause and paragraph (b) to read as follows:

552.212–72 Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items (May 2019)

* * * * *

(b) *Clauses.*

__552.223–70 Hazardous Substances.
__552.223–71 Nonconforming Hazardous Material.
__552.223–73 Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (HAZMAT) for Shipments.
__552.238–73 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.
__552.238–78 Identification of Products That Have Environmental Attributes.

* * * * *

552.215–71 [Removed and Reserved]

■ 13. Remove and reserve section 552.215–71.

■ 14. Revise sections 552.238–70 through 552.238–75 to read as follows:

Sec.

* * * * *

552.238–70 Cover Page for Worldwide Federal Supply Schedules.
552.238–71 Notice of Total Small Business Set-Aside.
552.238–72 Information Collection Requirements.
552.238–73 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.
552.238–74 Introduction of New Supplies/Services (INSS).
552.238–75 Evaluation—Commercial Items (Federal Supply Schedule).

* * * * *

552.238–70 Cover Page for Worldwide Federal Supply Schedules.

As prescribed in 538.273(a)(1), insert the following provision:

Cover Page for Worldwide Federal Supply Schedules (May 2019)

For All Geographic Areas

Solicitation No. [The contracting officer should insert the solicitation number here]*____*

Federal Supply Schedule Contract for All Geographic Areas [For supplies, the Contracting Officer should complete the information required by paragraph (a) and delete paragraph (b) in its entirety. For services, the Contracting Officer should complete the information required by paragraph (b) and delete (a) in its entirety. For solicitations containing both supplies and services, the Contracting Officer should complete paragraphs (a) and (b).]

(a) Federal Supply Classification (FSC) GROUP *____* PART *____* SECTION *____*

SUPPLY: *____* FSC CLASS(ES)/PRODUCT CODE(S)/NAICS: *____*

(b) STANDARD INDUSTRY GROUP: *____* SERVICE: *____* SERVICE CODE(S)/NAICS: *____*

(End of provision)

Alternate I (May 2019): As prescribed at 538.273(a)(1)(i), add the following paragraph (c) to the basic provision.

(c) PERIOD: *____* THROUGH *____*

552.238–71 Notice of Total Small Business Set-Aside.

As prescribed in 538.273(a)(2), insert the following provision:

Notice of Total Small Business Set-Aside (May 2019)

FAR clause 52.219–6, Notice of Total Small Business Set-Aside applies to the following:

[The contracting officer should insert the special item numbers (SINs) set aside for small businesses] *____*.

(End of provision)

552.238–72 Information Collection Requirements.

As prescribed in 538.273(a)(3), insert the following provision:

Information Collection Requirements (May 2019)

The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090–0163.

(End of provision)

552.238–73 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.

As prescribed in 538.273(b)(1), insert the following clause:

Identification of Electronic Office Equipment Providing Accessibility for the Handicapped (May 2019)

(a) *Definitions.* ''Electronic office equipment accessibility'' means the application/configuration of electronic office equipment (includes hardware, software and firmware) in a manner that accommodates the functional limitations of individuals with disabilities (*i.e.,* handicapped individuals) so as to promote productivity and provide access to work related and/or public information resources.

''Handicapped individuals'' mean qualified individuals with impairments as cited in 29 CFR 1613.702(f) who can benefit from electronic office equipment accessibility.

''Special peripheral'' means a special needs aid that provides access to electronic equipment that is otherwise inaccessible to a handicapped individual.

(b) The offeror is encouraged to identify in its offer, and include in any commercial catalogs and pricelists accepted by the Contracting Officer, office equipment, including any special peripheral, that will facilitate electronic office equipment accessibility for handicapped individuals. Identification should include the type of disability accommodated and how the users with that disability would be helped.

(End of clause)

552.238–74 Introduction of New Supplies/Services (INSS).

As prescribed in 538.273(b)(2), insert the following provision:

Introduction of New Supplies/Services (INSS) (May 2019)

(a) *Definition.*

Introduction of New Supplies/Services Special Item Number (INSS SIN) means a new or improved supply or service—within the scope of the Federal Supply Schedule (FSS), but not currently available under any Federal Supply Schedule contract—that provides a new service, function, task, or attribute that may provide a more economical or efficient means for ordering activities to accomplish their missions. It may significantly improve an existing supply or service. It may be a supply or service existing in the commercial market, but not yet introduced to the Federal Government.

(b) Offerors are encouraged to introduce new or improved supplies or services via INSS SIN at any time by clearly identify the INSS SIN item in the offer.

(c) The Contracting Officer has the sole discretion to determine whether a supply or service will be accepted as an INSS SIN item. The Contracting Officer will evaluate and process the offer and may perform a technical review. The INSS SIN provides temporary placement until the Contracting Officer formally categorizes the new supply or service.

(d) If the Contractor has an existing schedule contract, the Government may, at the sole discretion of the Contracting Officer, modify the existing contract to include the INSS SIN item in accordance with 552.238–81, Modifications (Federal Supply Schedules).

(End of provision)

552.238–75 Evaluation—Commercial Items (Federal Supply Schedule).

As prescribed in 538.273(c)(1), insert the following provision:

Evaluation—Commercial Items (Federal Supply Schedule) (May 2019)

(a) The Government may make multiple awards for the supplies or services offered in response to this solicitation that meet the definition of a ''commercial item'' in FAR 52.202 1. Awards may be made to those responsible offerors that offer reasonable pricing, conforming to the solicitation, and will be most advantageous to the Government, taking into consideration the multiplicity and complexity of items of various manufacturers and the differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, and other pertinent factors. By providing a selection of comparable supplies or services, ordering activities are afforded the opportunity to fulfill their requirements with the item(s) that constitute the best value and that meet their needs at the lowest overall cost.

(b) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

■ 15. Add section 552.238.76 to read as follows:

552.238–76 Use of Non-Government Employees to Review Offers.

As prescribed in 538.273(c)(2), insert the following provision:

Use of Non-Government Employees to Review Offers (May 2019)

(a) The Government may employ individual technical consultants/advisors/contractors from the below listed organizations to review limited portions of the technical, management and price proposals to assist the government in both pre-award and post-award functions. [The contracting officer should insert a list of organizations used to review solicitation responses and execute a non-disclosure and organizational conflict of interest statement for all individuals conducting reviews.]

____

(b) These representatives will be used to advise on specific technical, management, and price matters and shall not, under any circumstances, be used as voting evaluators. However, the Government may consider the advice provided in its evaluation process. In addition, Contractor personnel may be used in specific contract administration tasks (*e.g.,* administrative filing, review of deliverables, etc.).

(c) If individual technical consultants/advisors/contractors are utilized as described in (b) above, they will be required to execute a non-disclosure and organizational conflict of interest statements.

(End of provision)

■ 16. Revise sections 552.238–77 through 552.238–79 to read as follows:

Sec.

* * * * *

552.238–77 Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists.

552.238–78 Identification of Products that Have Environmental Attributes.

552.238–79 Cancellation.

* * * * *

552.238–77 Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists.

As prescribed in 538.273(d)(1), insert the following clause:

Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists (May 2019)

(a) Definition. For the purposes of this clause, the Mailing List is *[Contracting officer shall insert either: ''the list of addressees provided to the Contractor by the Contracting Officer'' or ''the Contractor's listing of its Federal Government customers''].*

(b) The Contracting Officer will return one copy of the Authorized FSS Schedule Pricelist to the Contractor with the notification of contract award.

(1) The Contractor shall provide to the GSA Contracting Officer:

(i) Two paper copies of Authorized FSS Schedule Pricelist; and

(ii) The Authorized FSS Schedule Pricelist on a common-use electronic medium. The

Contracting Officer will provide detailed instructions for the electronic submission with the award notification. Some structured data entry in a prescribed format may be required.

(2) The Contractor shall provide to each addressee on the mailing list either;

(i) One paper copy of the Authorized FSS Schedule Price List; or

(ii) A self-addressed, postage-paid envelope or postcard to be returned by addressees that want to receive a paper copy of the pricelist. The Contractor shall distribute price lists within 20 calendar days after receipt of returned requests.

(3) The Contractor shall advise each addressee of the availability of pricelist information through the online Multiple Award Schedule electronic data base.

(c) The Contractor shall make all of the distributions required in this paragraph (c) at least 15 calendar days before the beginning of the contract period, or within 30 calendar days after receipt of the Contracting Officer's approval for printing, whichever is later.

(d) During the period of the contract, the Contractor shall provide one copy of its Authorized FSS Schedule Pricelist to any authorized schedule user, upon request. Use of the mailing list for any other purpose is not authorized.

(End of clause)

Alternate I (May 2019). As prescribed in 538.273(a)(2), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) *Definition.* For the purposes of this clause, the Mailing List is *[Contracting officer shall insert either: ''the list of addressees provided to the Contractor by the Contracting Officer'' or ''the Contractor's listing of its ordering activity customers''].*

552.238–78 Identification of Products that Have Environmental Attributes.

As prescribed in 538.273(d)(2), insert the following clause:

Identification of Products That Have Environmental Attributes (May 2019)

(a) Several laws, Executive orders, and Agency directives require Federal buyers to purchase products that are less harmful to the environment, when they are life cycle cost-effective (see FAR Subpart 23.7). The U.S. General Services Administration (GSA) requires contractors to highlight environmental products under Federal Supply Service schedule contracts in various communications media (*e.g.,* publications and electronic formats).

(b) *Definitions.* As used in this clause—

Energy-efficient product means a product that—

(1) Meets Department of Energy and Environmental Protection Agency criteria for use of the ENERGY STAR® trademark label; or

(2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

GSA Advantage! is an on-line shopping mall and ordering system that provides customers with access to products and services under GSA contracts.

Other environmental attributes refers to product characteristics that provide environmental benefits, excluding recovered materials and energy and water efficiency. Several examples of these characteristics are biodegradable, recyclable, reduced pollutants, ozone safe, and low volatile organic compounds (VOCs).

Post-consumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Post-consumer material is part of the broader category of ''recovered material.'' The Environmental Protection Agency (EPA) has developed a list of EPA-designated products in their Comprehensive Procurement Guidelines (CPGs) to provide Federal agencies with purchasing recommendations on specific products in a Recovered Materials Advisory Notice (RMAN). The RMAN contains recommended recovered and post-consumer material content levels for the specific products designated by EPA (40 CFR part 247 and *http://www.epa.gov/cpg/*).

Recovered materials means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (Executive Order 13101 and 42 U.S.C. 6903(19) and *http://www.epa.gov/cpg/*). For paper and paper products, see the definition at FAR 11.301 (42 U.S.C. 6962(h)).

Remanufactured means factory rebuilt to original specifications.

Renewable energy means energy produced by solar, wind, geothermal, and biomass power.

Renewable energy technology means—

(1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

(c) *Identification requirements.* (1) The offeror must identify products that—

(i) Are compliant with the recovered and post-consumer material content levels recommended in the Recovered Materials Advisory Notices (RMANs) for EPA-designated products in the CPG program (*http://www.epa.gov/cpg/*);

(ii) Contain recovered materials that either do not meet the recommended levels in the RMANs or are not EPA-designated products in the CPG program (see FAR 23.401 and *http://www.epa.gov/cpg/*);

(iii) Are energy-efficient, as defined by either ENERGY STAR® and/or FEMP's designated top 25th percentile levels (see ENERGY STAR® at *http://www.energystar.gov/* and FEMP at *http://www.eere.energy.gov/femp/procurement/*);

(iv) Are water-efficient;

(v) Use renewable energy technology;

(vi) Are remanufactured; and

(vii) Have other environmental attributes.

(2) These identifications must be made in each of the offeror's following mediums:

(i) The offer itself.

(ii) Printed commercial catalogs, brochures, and pricelists.

(iii) Online product website.

(iv) Electronic data submission for GSA Advantage! submitted via GSA's Schedules Input Program (SIP) software or the Electronic Data Inter-change (EDI). Offerors can use the SIP or EDI methods to indicate environmental and other attributes for each product that are translated into respective icons in GSA Advantage!.

(d) An offeror, in identifying an item with an environmental attribute, must possess evidence or rely on a reasonable basis to substantiate the claim (see 16 CFR part 260, Guides for the Use of Environmental Marketing Claims). The Government will accept an offeror's claim of an item's environmental attribute on the basis of—

(1) Participation in a Federal agency sponsored program (*e.g.,* the EPA and DOE ENERGY STAR® product labeling program);

(2) Verification by an independent organization that specializes in certifying such claims; or

(3) Possession of competent and reliable evidence. For any test, analysis, research, study, or other evidence to be ''competent and reliable,'' it must have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

(End of clause)

552.238–79 Cancellation.

As prescribed in 538.273(d)(3), insert the following clause:

Cancellation (May 2019)

Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 calendar days after the other party receives the notice of cancellation. If the Contractor elects to cancel this contract, the Government will not reimburse the minimum guarantee.

(End of clause)

■ 17. Add section 552.238–80 to read as follows:

552.238–80 Industrial Funding Fee and Sales Reporting.

As prescribed in 538.273(d)(4) insert the following clause:

Industrial Funding Fee and Sales Reporting (May 2019)

(a) Reporting of Federal Supply Schedule Sales. The Contractor shall report all contract sales under this contract as follows:

(1) The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this contract by calendar quarter (January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31). The dollar value of a sale is the price paid by the Schedule user for products and services on a Schedule task or delivery order. The reported contract sales value shall include the Industrial Funding Fee (IFF). The Contractor shall maintain a consistent

accounting method of sales reporting, based on the Contractor's established commercial accounting practice. The acceptable points at which sales may be reported include—

(i) Receipt of order;

(ii) Shipment or delivery, as applicable;

(iii) Issuance of an invoice; or

(iv) Payment.

(2) Contract sales shall be reported to Federal Acquisition Services (FAS) within 30 calendar days following the completion of each reporting quarter. The Contractor shall continue to furnish quarterly reports, including ''zero'' sales, through physical completion of the last outstanding task order or delivery order of the contract.

(3) Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Governmentwide Acquisition Contract (GWAC); a separately awarded FAR Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract. Sales made to state and local governments under Cooperative Purchasing authority shall be counted as reportable sales for IFF purposes.

(4) The Contractor shall electronically report the quarterly dollar value of sales, including ''zero'' sales, by utilizing the automated reporting system at an internet website designated by the General Services Administration (GSA)'s Federal Acquisition Service (FAS). Prior to using this automated system, the Contractor shall complete contract registration with the FAS Vendor Support Center (VSC). The website address, as well as registration instructions and reporting procedures, will be provided at the time of award. The Contractor shall report sales separately for each National Stock Number (NSN), Special Item Number (SIN), or sub-item.

(5) The Contractor shall convert the total value of sales made in foreign currency to U.S. dollars using the ''Treasury Reporting Rates of Exchange'' issued by the U.S. Department of Treasury, Financial Management Service. The Contractor shall use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from Financial Management Service, International Funds Branch, Telephone: (202) 874–7994, internet: *http://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/treasRptRateExch_home.htm.*

(b) The Contractor shall remit the IFF at the rate set by GSA's FAS.

(1) The Contractor shall remit the IFF to FAS in U.S. dollars within 30 calendar days after the end of the reporting quarter; final payment shall be remitted within 30 days after physical completion of the last outstanding task order or delivery order of the contract.

(2) The IFF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of GSA's FAS. GSA's FAS has the unilateral right to change the percentage at any time, but not more than once per year. FAS will provide reasonable notice prior to the effective date of the change. The IFF reimburses FAS for the costs of operating the Federal Supply Schedules Program. FAS recoups its operating costs from ordering activities as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefitting other authorized FAS programs, in accordance with 40 U.S.C. 321. Offerors must include the IFF in their prices. The fee is included in the award price(s) and reflected in the total amount charged to ordering activities. FAS will post notice of the current IFF at *https://72a.gsa.gov/* or successor website as appropriate.

(c) Within 60 days of award, an FAS representative will provide the Contractor with specific written procedural instructions on remitting the IFF. FAS reserves the unilateral right to change such instructions from time to time, following notification to the Contractor.

(d) Failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or setting off payments and interest on the debt (see FAR clause 52.232–17, Interest). Should the Contractor fail to submit the required sales reports, falsify them, or fail to timely pay the IFF, this is sufficient cause for the Government to terminate the contract for cause.

(End of clause)

Alternate I (May 2019). As prescribed in 538.273(d)(4), substitute the following paragraphs (a), (b), (c), and (d) for paragraphs (a), (b), (c), and (d) of the basic clause:

(a) Definition. ''Transactional data'' encompasses the historical details of the products or services delivered by the Contractor during the performance of task or delivery orders issued against this contract.

(b) Reporting of Transactional Data. The Contractor must report all transactional data under this contract as follows:

(1) The Contractor must electronically report transactional data by utilizing the automated reporting system at an internet website designated by the General Services Administration (GSA) or by uploading the data according to GSA instructions. GSA will post registration instructions and reporting procedures on the Vendor Support Center website, *https://vsc.gsa.gov*. The reporting system website address, as well as registration instructions and reporting procedures, will be provided at the time of award or inclusion of this clause in the contract.

(2) The Contractor must provide, at no additional cost to the Government, the following transactional data elements, as applicable:

(i) Contract or Blanket Purchase Agreement (BPA) Number.

(ii) Delivery/Task Order Number/Procurement Instrument Identifier (PIID).

(iii) Non Federal Entity.

(iv) Description of Deliverable.

(v) Manufacturer Name.

(vi) Manufacturer Part Number.

(vii) Unit Measure (each, hour, case, lot).

(viii) Quantity of Item Sold.

(ix) Universal Product Code.

(x) Price Paid per Unit.

(xi) Total Price.

Note to paragraph (b)(2): The Contracting Officer may add data elements to the standard elements listed in paragraph (b)(2) of this section with the approvals listed in GSAM 507.105(c)(3).

(3) The contractor must report transactional data within 30 calendar days from the last calendar day of the month. If there was no contract activity during the month, the Contractor must submit a confirmation of no reportable transactional data within 30 calendar days of the last calendar day of the month.

(4) The Contractor must report the price paid per unit, total price, or any other data elements with an associated monetary value listed in (b)(2) of this section, in U.S. dollars.

(5) The reported price paid per unit and total price must include the Industrial Funding Fee (IFF).

(6) The Contractor must maintain a consistent accounting method of transactional data reporting, based on the Contractor's established commercial accounting practice.

(7) Reporting Points.

(i) The acceptable points at which transactional data may be reported include—

(A) Issuance of an invoice; or

(B) Receipt of payment.

(ii) The Contractor must determine whether to report transactional data on the basis of invoices issued or payments received.

(8) The Contractor must continue to furnish reports, including confirmation of no transactional data, through physical completion of the last outstanding task or delivery order of the contract.

(9) Unless otherwise expressly stated by the ordering activity, orders that contain classified information or other or information that would compromise national security are exempt from this reporting requirement.

(10) This clause does not exempt the Contractor from fulfilling existing reporting requirements contained elsewhere in the contract.

(11) GSA reserves the unilateral right to change reporting instructions following 60 calendar days' advance notification to the Contractor.

(c) *Industrial Funding Fee (IFF).*

(1) This contract includes an IFF charged on orders placed against this contract. The IFF is paid by the authorized ordering activity but remitted to GSA by the Contractor. The IFF reimburses GSA for the costs of operating the Federal Supply Schedule program, as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefitting other authorized GSA programs, in accordance with 40 U.S.C. 321.

(2) GSA has the unilateral right to change the fee amount at any time, but not more than once per year; GSA will provide reasonable notice prior to the effective date of any change. GSA will post notice of the current

IFF on the Vendor Support Center website at *https://vsc.gsa.gov*.

(3) Offerors must include the IFF in their prices. The fee is included in the awarded price(s) and reflected in the total amount charged to ordering activities. The fee will not be included in the price of non-contract items purchased pursuant to a separate contracting authority, such as a Governmentwide Acquisition Contract (GWAC); a separately awarded Federal Acquisition Regulation (FAR) Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract.

(4) The Contractor must remit the IFF to GSA in U.S. dollars within 30 calendar days after the last calendar day of the reporting quarter; final payment must be remitted within 30 calendar days after physical completion of the last outstanding task order or delivery order issued against the contract.

(5) GSA reserves the unilateral right to change remittance instructions following 60 calendar days' advance notification to the Contractor.

(d) The Contractor's failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or offsetting payments and interest on the debt (see FAR clause 52.232–17, Interest). If the Contractor fails to submit the required transactional data reports, falsifies them, or fails to timely pay the IFF, these reasons constitute sufficient cause for the Government to terminate the contract for cause.

■ 18. Revise sections 552.238–81 and 552.238–82 to read as follows:

552.238–81 Price Reductions.

As prescribed in 538.273(d)(5) insert the following clause:

Price Reductions (May 2019)

(a) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer (or category of customers). This relationship shall be maintained throughout the contract period. Any change in the Contractor's commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the customer (or category of customers) that was the basis of award. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(c)(1) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor—

(i) Revises the commercial catalog, pricelist, schedule or other document upon which contract award was predicated to reduce prices;

(ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated; or

(iii) Grants special discounts to the customer (or category of customers) that formed the basis of award, and the change disturbs the price/discount relationship of the Government to the customer (or category of customers) that was the basis of award.

(2) The Contractor shall offer the price reduction to the eligible ordering activity with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

(d) There shall be no price reduction for sales—

(1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in this contract;

(2) To Federal agencies;

(3) Made to Eligible Ordering Activities identified in GSAR Clause 552.238–113 when the order is placed under this contract (and the Eligible Ordering Activities identified in GSAR Clause 552.238–113 is the agreed upon customer or category of customer that is the basis of award); or

(4) Caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.

(e) The Contractor may offer the Contracting Officer a voluntary Governmentwide price reduction at any time during the contract period.

(f) The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date.

(g) The contract will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

(End of clause)

Alternate I (May 2019). As prescribed in 538.273(d)(5), substitute the following paragraph (a) and (b) for paragraphs (a), (b), (c), (d), (e), (f) and (g) of the basic clause:

(a) The Government may request from the Contractor, and the Contractor may provide to the Government, a temporary or permanent price reduction at any time during the contract period.

(b) The Contractor may offer the Contracting Officer a voluntary price reduction at any time during the contract period.

552.238–82 Modifications (Federal Supply Schedules).

As prescribed in 538.273(d)(6), insert the following clause:

Modifications (Federal Supply Schedules) (May 2019)

(a) *General.* The Contractor may request a contract modification by submitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) *Types of modifications*—(1) *Additional items/additional SINs.* When requesting additions, the following information must be submitted:

(i) Information requested in paragraphs (1) and (2) of the Commercial Sales Practice Format to add SINs.

(ii) Discount information for the new items(s) or new SIN(s). Specifically, submit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be submitted instead.

(iii) Information about the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215–6, Place of Performance.

(vi) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223–3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(vii) Any information requested by FAR 52.212–3(f), Offeror Representations and Certifications—Commercial Items, that may be necessary to assure compliance with FAR 52.225–1, Buy American Act—Balance of Payments Programs—Supplies.

(2) *Deletions.* The Contractors shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the contracting officer finds the higher price to be unreasonable when compared with the deleted item.

(3) *Price reduction.* The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238–81. If the Price reduction falls under item (i), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall submit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction.

(c) *Effective dates.* The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238–81.

(d) *Electronic file updates.* The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price

reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at 552.238–81.

(e) *Amendments to paper Federal Supply Schedule Price Lists.* (1) The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

(i) Distribute a supplemental paper Federal Supply Schedule Price List within 15 workdays after the effective date of each modification.

(ii) Distribute quarterly cumulative supplements. The period covered by a cumulative supplement is at the discretion of the Contractor, but may not exceed three calendar months from the effective date of the earliest modification. For example, if the first modification occurs in February, the quarterly supplement must cover February-April, and every three month period after. The Contractor must distribute each quarterly cumulative supplement within 15 workdays from the last day of the calendar quarter.

(2) At a minimum, the Contractor shall distribute each supplement to those ordering activities that previously received the basic document. In addition, the Contractor shall submit two copies of each supplement to the Contracting Officer and one copy to the FSS Schedule Information Center.

(End of clause)

Alternate I (May 2019). As prescribed in 538.273(d)(6)(i), add the following paragraph (f) to the basic clause:

(f) Electronic submission of modification requests is mandatory via eMod (*http://eOffer.gsa.gov*), unless otherwise stated in the electronic submission standards and requirements at the Vendor Support Center website (*http://vsc.gsa.gov*). If the electronic submissions standards and requirements information is updated at the Vendor Support Center website, Contractors will be notified prior to the effective date of the change.

Alternate II (May 2019). As prescribed in 538.273(d)(6)(ii), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) *Types of Modifications.*

(1) Additional items/additional SINs. When requesting additions, the Contractor must submit the following information:

(i) Information about the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the instructions in the solicitation.

(ii) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(iii) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215–6, Place of Performance.

(iv) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223–3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(v) Any information requested by FAR 52.212–3(f), Offeror Representations and Certifications—Commercial Items, that may be necessary to assure compliance with FAR 52.225–1, Buy American Act—Balance of Payments Programs—Supplies.

(2) Deletions. The Contractor must provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the Contracting Officer determines that the higher price is unreasonable compared to the price of the deleted item.

■ 19. Add sections 552.238–83 through 552.238–115 to read as follows:

Sec.

* * * * *

* * * * *

552.238–83 Examination of Records by GSA (Federal Supply Schedules).

As prescribed in 538.273(d)(7) insert the following clause:

Examination of Records by GSA (Federal Supply Schedules) (May 2019)

The Contractor agrees that the Administrator of General Services or any duly authorized representative shall have access to and the right to examine any books, documents, papers and records of the contractor involving transactions related to this contract for overbillings, billing errors, compliance with contract clauses 552.238–75, Price Reductions and 552.238–74, Industrial Funding Fee and Sales Reporting. This authority shall expire 3 years after final payment. The basic contract and each option shall be treated as separate contracts for purposes of applying this clause.

(End of clause)

552.238–84 Discounts for Prompt Payment.

As prescribed in 538.273(d)(8), insert the following clause:

Discounts for Prompt Payment (May 2019)

(a) Discounts for early payment (hereinafter referred to as ''discounts'' or ''the discount'') will be considered in evaluating the relationship of the Offeror's concessions to the Government vis-a-vis the Offeror's concessions to its commercial and Federal non-schedule customers, but only to the extent indicated in this clause.

(b) Discounts will not be considered to determine the low Offeror in the situation described in the ''Offers on Identical Products'' provision of this solicitation.

(c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the ''value of funds'' rate established by the Department of the Treasury and published quarterly in the **Federal Register**. The ''value of funds'' rate applied will be the rate in effect on the date specified for the receipt of offers.

(d) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract. Discounts offered will be taken by the ordering activity if payment is made within the discount period specified.

(e) Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

(f) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose

of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(End of clause)

552.238–85 Contractor's Billing Responsibilities.

As prescribed in 538.273(d)(9) insert the following clause:

Contractor's Billing Responsibilities (May 2019)

(a) The Contractor is required to perform all billings made pursuant to this contract. However, if the Contractor has dealers that participate on the contract and the billing/payment process by the Contractor for sales made by the dealer is a significant administrative burden, the following alternative procedures may be used. Where dealers are allowed by the Contractor to bill ordering activities and accept payment in the Contractor's name, the Contractor agrees to obtain from all dealers participating in the performance of the contract a written agreement, which will require dealers to—

(1) Comply with the same terms and conditions as the Contractor for sales made under the contract;

(2) Maintain a system of reporting sales under the contract to the manufacturer, which includes—

(i) The date of sale;

(ii) The ordering activity to which the sale was made;

(iii) The service or supply/model sold;

(iv) The quantity of each service or supply/model sold;

(v) The price at which it was sold, including discounts; and

(vi) All other significant sales data.

(3) Be subject to audit by the Government, with respect to sales made under the contract; and

(4) Place orders and accept payments in the name of the Contractor in care of the dealer.

(b) An agreement between a Contractor and its dealers pursuant to this procedure will not establish privity of contract between dealers and the Government.

(End of clause)]

552.238–86 Delivery Schedule.

As prescribed in 538.273(d)(10) insert the following clause:

Items or group of items (special item no. or nomenclature)	Government's stated delivery time (days ARO)	Contractor's delivery time
*	*	*
*	*	*
*	*	*

(b) *Expedited delivery times.* For those items that can be delivered quicker than the delivery times in paragraph (a) of this clause, the Offeror is requested to insert below, a time (hours/days ARO) that delivery can be made when expedited delivery is requested.

Items or group of items (special item no. or nomenclature)	Expedited delivery time (hours/days ARO)
*	*
*	
*	*
*	

(c) *Overnight and 2-Day delivery times.* Ordering activities may require overnight or 2-day delivery. The Offeror is requested to annotate its price list or by separate attachment identify the items that can be delivered overnight or within 2 days. Contractors offering such delivery services will be required to state in the cover sheet to its FSS price list details concerning this service.

(End of clause)]

552.238–87 Delivery Prices.

As prescribed in 538.273(d)(11), insert the following clause:

Delivery Prices (May 2019)

(a) Prices offered must cover delivery as provided below to destinations located within the 48 contiguous States and the District of Columbia.

(1) Delivery to the door of the specified Government activity by freight or express common carriers on articles for which store-door delivery is provided, free or subject to a charge, pursuant to regularly published tariffs duly filed with the Federal and/or State regulatory bodies governing such carrier; or, at the option of the Contractor, by parcel post on mailable articles, or by the Contractor's vehicle. Where store-door delivery is subject to a charge, the Contractor shall place the notation ''Delivery Service Requested'' on bills of lading covering such shipments, and pay such charge and add the actual cost thereof as a separate item to his invoice.

(2) Delivery to siding at destinations when specified by the ordering office, if delivery is not covered under paragraph (a)(1) of this section.

(3) Delivery to the freight station nearest destination when delivery is not covered under paragraph (a)(1) or (2) of this section.

(b) The Offeror shall indicate in the offer whether or not prices submitted cover delivery f.o.b. destination in Alaska, Hawaii, and the Commonwealth of Puerto Rico.

(c) When deliveries are made to destinations outside the contiguous 48 States; *i.e.,* Alaska, Hawaii, and the Commonwealth of Puerto Rico, and are not covered by paragraph (b), above, the following conditions will apply:

(1) Delivery will be f.o.b. inland carrier, point of exportation (FAR 52.247–38), with the transportation charges to be paid by the Government from point of exportation to destination in Alaska, Hawaii, or the Commonwealth of Puerto Rico, as designated by the ordering office. The Contractor shall add the actual cost of transportation to destination from the point of exportation in the 48 contiguous States nearest to the designated destination. Such costs will, in all cases, be based upon the lowest regularly established rates on file with the Interstate Commerce Commission, the U.S. Maritime Commission (if shipped by water), or any State regulatory body, or those published by the U.S. Postal Service; and must be supported by paid freight or express receipt or by a statement of parcel post charges including weight of shipment.

(2) The right is reserved to ordering agencies to furnish Government bills of lading.

(End of clause)

552.238–88 GSA Advantage!®.

As prescribed in 538.273(d)(12), insert the following clause:

GSA Advantage!® (May 2019)

(a) The Contractor shall participate in the GSA Advantage!® online shopping service. Information and instructions regarding Contractor participation are contained in clause 552.238–111, Electronic Commerce.

Delivery Schedule (May 2019)

(a) *Time of delivery.* The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO) in the case of F.O.B. Destination prices; or to place of shipment in transit in the case of F.O.B. Origin prices, as set forth below. Offerors shall insert in the ''Time of Delivery (days ARO)'' column in the schedule of Items a definite number of calendar days within which delivery will be made. In no case shall the offered delivery time exceed the Contractor's normal business practice. The Government requires the Contractor's normal delivery time, as long as it is less than the ''stated'' delivery time(s) shown below. If the Offeror does not insert a delivery time in the schedule of items, the Offeror will be deemed to offer delivery in accordance with the Government's stated delivery time, as stated below [The contracting officer shall insert the solicited items or Special Item Numbers (SIN) as well as a reasonable delivery time that corresponds with each item or SIN, if known]:

(b) The Contractor shall refer to contract clauses 552.238–71, Submission and Distribution of Authorized FSS Price Lists (which provides for submission of price lists on a common-use electronic medium), and 552.238–81, Modifications (which addresses electronic file updates).

(End of clause)

552.238–89 Deliveries to the U.S. Postal Service.

As prescribed in 538.273(d)(13), insert the following clause:

Deliveries to the U.S. Postal Service (May 2019)

(a) *Applicability.* This clause applies to orders placed for the U.S. Postal Service (USPS) and accepted by the Contractor for the delivery of supplies to a USPS facility (consignee).

(b) *Mode/method of transportation.* Unless the Contracting Officer grants a waiver of this requirement, any shipment that meets the USPS requirements for mailability (*i.e.,* 70 pounds or less, combined length and girth not more than 108 inches, etc.) delivery shall be accomplished via the use of the USPS. Other commercial services shall not be used, but this does not preclude the Contractor from making delivery by the use of the Contractor's own vehicles.

(c) *Time of delivery.* Notwithstanding the required time for delivery to destination as may be specified elsewhere in this contract, if shipments under this clause are mailed not later than five (5) calendar days before the required delivery date, delivery shall be deemed to have been made timely.

(End of clause)

552.238–90 Characteristics of Electric Current.

As prescribed in 538.273(d)(14), insert the following clause:

Characteristics of Electric Current (May 2019)

Contractors supplying equipment which uses electrical current are required to supply equipment suitable for the electrical system at the location at which the equipment is to be used as specified on the order.

(End of clause)

552.238–91 Marking and Documentation Requirements for Shipping.

As prescribed in 538.273(d)(15), insert the following clause:

Marking and Documentation Requirements for Shipping (May 2019)

(a) *Responsibility.* It shall be the responsibility of the ordering activity to determine the full marking and documentation requirements necessary under the various methods of shipment authorized by the contract.

(b) *Documentation.* In the event the ordering activity fails to provide the essential information and documentation, the Contractor shall, within three days after receipt of order, contact the ordering activity and advise them accordingly. The Contractor shall not proceed with any shipment requiring transshipment via U.S. Government facilities without the prerequisites stated in paragraph (c) of this section.

(c) *Direct shipments.* The Contractor shall mark all items ordered against this contract with indelible ink, paint or fluid, as follows:

(1) Traffic Management or Transportation Officer at FINAL destination.

(2) Ordering Supply Account Number.

(3) Account number.

(4) Delivery Order or Purchase Order Number.

(5) National Stock Number, if applicable; or Contractor's item number.

(6) Box ____of ____Boxes.

(7) Nomenclature (brief description of items).

(End of clause)

552.238–92 Vendor Managed Inventory (VMI) Program.

As prescribed in 538.273(d)(16), insert the following clause:

Vendor Managed Inventory (VMI) Program (May 2019)

(a) The term ''Vendor Managed Inventory'' describes a system in which the Contractor monitors and maintains specified inventory levels for selected items at designated stocking points. VMI enables the Contractor to plan production and shipping more efficiently. Stocking points benefit from reduced inventory but steady stock levels.

(b) Contractors that commercially provide a VMI-type system may enter into similar partnerships with ordering agencies under a Blanket Purchase Agreement.

(End of clause)

552.238–93 Order Acknowledgement.

As prescribed in 538.273(d)(17), insert the following clause:

Order Acknowledgement (May 2019)

Contractors shall acknowledge only those orders which state ''Order Acknowledgement Required.'' These orders shall be acknowledged within 10 calendar days after receipt. Such acknowledgement shall be sent to the ordering activity placing the order and contain information pertinent to the order, including the anticipated delivery date.

(End of clause)

552.238–94 Accelerated Delivery Requirements.

As prescribed in 538.273(d)(18), insert the following clause:

Accelerated Delivery Requirements (May 2019)

When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, the ordering activity is encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within three (3) business days after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

(End of clause)

552.238–95 Separate Charge for Performance Oriented Packaging (POP).

As prescribed in 538.273(d)(19), insert the following clause:

Separate Charge for Performance Oriented Packaging (POP) (May 2019)

(a) Offerors are requested to list the hazardous material item to which the separate charge applies in the spaces provided in this paragraph or on a separate attachment. The final price shall be quoted separately at the order level and, if considered reasonable, will be accepted as part of the order.

ITEMS	
SINS or Descriptive Name of Articles (as appropriate).	Charge for Performance Oriented

(b) Ordering activities will not be obligated to utilize the Contractor's services for Performance Oriented Packaging, and they may obtain such services elsewhere if desired. However, the Contractor shall provide items in Performance Oriented Packaging when such packing is specified on the delivery order. The Contractor's contract price and the charge for Performance Oriented Packaging will be shown as separate entries on the delivery order.

(End of clause)

552.238–96 Separate Charge for Delivery within Consignee's Premises.

As prescribed in 538.273(d)(20), insert the following clause:

Separate Charge for Delivery within Consignee's Premises (May 2019)

(a) Offerors are requested to insert, in the spaces provided below or by attachment hereto, a separate charge for ''Delivery Within Consignee's Premises'' applicable to each shipping container to be shipped. (Articles which are comparable in size and weight, and for which the same charge is applicable, should be grouped under an appropriate item description.) These additional charges will be accepted as part of the award, if considered reasonable, and shall be included in the Contractor's published catalog and/or price list.

(b) Ordering activities are not obligated to issue orders on the basis of ''Delivery Within Consignee's Premises,'' and Contractors may refuse delivery on that basis provided such refusal is communicated in writing to the ordering activity issuing such orders within 5 days of the receipt of such order by the

Contractor and provided further, that delivery is made in accordance with the other delivery requirements of the contract. Failure of the Contractor to submit this notification within the time specified shall constitute acceptance to furnish ''Delivery Within Consignee's Premises'' at the additional charge awarded. When an ordering activity issues an order on the basis of ''Delivery Within Consignee's Premises'' at the accepted additional charge awarded and the Contractor accepts such orders on that basis, the Contractor will be obligated to provide delivery ''F.o.b. Destination, Within Consignee's Premises'' in accordance with FAR 52.247–35, which is then incorporated by reference, with the exception that an additional charge as provided herein is allowed for such services. Unless otherwise stipulated by the Offeror, the additional charges awarded hereunder may be applied to any delivery within the 48 contiguous States and the District of Columbia.

(c) When exercising their option to issue orders on the basis of delivery service as provided herein, ordering activities will specify ''Delivery Within Consignee's Premises'' on the order, and will indicate the exact location to which delivery is to be made. The Contractor's delivery price and the additional charge(s) for ''Delivery Within Consignee's Premises'' will be shown as separate entries on the order.

ITEMS	
(NSNs or Special Item Numbers or Descriptive Name of Articles).	Additional Charge (Per shipping container) FOR ''DELIVERY WITHIN CONSIGNEE'S PREMISES''

(End of clause)

552.238–97 Parts and Service.

As prescribed in 538.273(d)(21), insert the following clause:

Parts and Service (May 2019)

(a) For equipment under items listed in the schedule of items or services on which offers are submitted, the Contractor represents by submission of this offer that parts and services (including the performing of warranty or guarantee service) are now available from dealers or distributors serving the areas of ultimate overseas destination or that such facilities will be established and will be maintained throughout the contract period. If a new servicing facility is to be established, the facility shall be established no later than the beginning of the contract period.

(b) Each Contractor shall be fully responsible for the services to be performed by the named servicing facilities, or by such facilities to be established, and fully guarantees performance of such services if the original service proves unsatisfactory.

(c) Contractors are requested to provide the Ordering Activity, the names and addresses of all supply and service points maintained in the geographic area in which the Contractor will perform. Please indicate opposite each point whether or not a complete stock of repair parts for items offered is carried at that point, and whether or not mechanical service is available.

(End of clause)

552.238–98 Clauses for Overseas Coverage.

As prescribed in 538.273(d)(22), insert the following clause:

Clauses for Overseas Coverage (May 2019)

The following clauses apply to overseas coverage.

(a) 52.214–34 Submission of Offers in the English Language
(b) 52.214–35 Submission of Offers in U.S. Currency
(c) 552.238–90 Characteristics of Electric Current
(d) 552.238–91 Marking and Documentation Requirements Per Shipment
(e) 552.238–97 Parts and Service
(f) 552.238–99 Delivery Prices Overseas
(g) 552.238–100 Transshipments
(h) 552.238–101 Foreign Taxes and Duties
(i) 52.247–34 FOB Destination
(j) 52.247–38 FOB Inland Carrier, Point of Exportation
(k) 52.247–39 FOB Inland Point, Country of Importation

(End of clause)

552.238–99 Delivery Prices Overseas.

As prescribed in 538.273(d)(23), insert the following clause:

Delivery Prices Overseas (May 2019)

(a) Prices offered must cover delivery to destinations as provided as follows:

(1) Direct delivery to consignee. F.O.B. Inland Point, Country of Importation (FAR 52.247–39). (Offeror should indicate countries where direct delivery will be provided.)

(2) Delivery to overseas assembly point for transshipment when specified by the ordering activity, if delivery is not covered under paragraph (1), above.

(3) Delivery to the overseas port of entry when delivery is not covered under paragraph (a)(1) or (2) of this section.

(b) Geographic area(s)/countries/zones which are intended to be covered must be identified in the offer.

(End of clause)

552.238–100 Transshipments.

As prescribed in 538.273(d)(24), insert the following clause:

Transshipments (May 2019)

(a) The Contractor shall complete two (2) DD Forms 1387, Military Shipment Labels and, if applicable, four copies of DD Form 1387–2, Special Handling/Data Certification—used when shipping chemicals, dangerous cargo, etc.

(1) Two copies of the DD Form 1387 will be attached to each shipping container delivered to the port Transportation Officer for subsequent transshipment by the Government as otherwise provided for under the terms of this contract.

(2) These forms will be attached to one end and one side, not on the top or bottom, of the container.

(3) The Contractor will complete the bottom line of these forms, which pertains to the number of pieces, weight and cube of each piece, using U.S. weight and cubic measures. Weights will be rounded off to the nearest pound. (One kg = 2.2 U.S. pounds; one cubic meter = 35.3156 cubic feet.)

(b) In addition, if the cargo consists of chemicals, or is dangerous, one copy of the DD Form 1387–2 will be attached to the container, and three copies will be furnished to the Transportation Officer with the Bill of Lading.

(c) Dangerous cargo will not be intermingled with non-dangerous cargo in the same container.

(d) Copies of the above forms and preparation instructions will be obtained from the ordering activity issuing the Delivery Order. Reproduced copies of the forms are acceptable.

(e) Failure to include DD Form 1387, and DD Form 1387–2, if applicable, on each shipping container will result in rejection of shipment by the port Transportation Officer.

(End of clause)

552.238–101 Foreign Taxes and Duties.

As prescribed in 538.273(d)(25), insert the following clause:

Foreign Taxes and Duties (May 2019)

Prices offered must be net, delivered, f.o.b. to the destinations accepted by the Government.

(a) The Contractor warrants that such prices do not include any tax, duty, customs fees, or other foreign Governmental costs, assessments, or similar charges from which the U.S. Government is exempt.

(b) Standard commercial export packaging, including containerization, if necessary, packaging, preservation, and/or marking are included in the pricing offered and accepted by the Government.

(End of clause)

552.238–102 English Language and U.S. Dollar Requirements.

As prescribed in 538.273(d)(26), insert the following clause:

English Language and U.S. Dollar Requirements (May 2019)

(a) All documents produced by the Contractor to fulfill requirements of this contract including, but not limited to, Federal Supply Schedule catalogs and price lists, must reflect all terms and conditions in the English language.

(b) U.S. dollar equivalency, if applicable, will be based on the rates published in the ''Treasury Reporting Rates of Exchange'' in effect as of the date of the agency's purchase order or in effect during the time period specified elsewhere in this contract.

(End of clause)

552.238–103 Electronic Commerce.

As prescribed in 538.273(d)(27), insert the following clause:

Electronic Commerce (May 2019)

(a) *General background.* The Federal Acquisition Streamlining Act (FASA) of 1994 requires the Government to evolve its acquisition process from one driven by paper to an expedited process based on electronic commerce/electronic data interchange (EC/EDI). EC/EDI encompasses more than merely automating manual processes and eliminating paper transactions. EC/EDI improves business processes (*e.g.* procurement, finance, logistics) into a fully electronic environment and fundamentally changes the way organizations operate.

(b) *Trading partners and Value-Added Networks (VAN's).*

(1) Within the electronic commerce architecture, electronic documents (*e.g.,* orders, invoices, etc.) are carried between the Federal Government's procuring office and Contractors (now known as ''trading partners''). These transactions are carried by commercial telecommunications companies called Value-Added Networks (VAN's).

(2) EDI can be performed using commercially available hardware, software, and telecommunications. The selection of a VAN is a business decision Contractors must make. There are many different VAN's which provide a variety of electronic services and different pricing strategies. If the VAN only provides communications services, you may also need a software translation package.

(c) *Registration instructions.* To perform EDI with the Government, Contractors shall register as a trading partner. Contractors will provide regular business information, banking information, and EDI capabilities to all agencies in this single registration. A central repository of all trading partners is the Systems for Award Management (SAM) *http://www.sam.gov.* Contractors shall follow the instructions on the SAM website regarding how to register for EDI.

(d) *Implementation conventions.* All EDI transactions must comply with the Federal Implementation Conventions (ICs). The ICs are available on a registry maintained by the National Institute of Standards and Technology (NIST). It is accessible via the INTERNET at *http://www.nist.gov/itl.* ICs are available for common business documents such as Purchase Order, Price Sales Catalog, Invoice, Request for Quotes, etc.

(e) *Additional information.* GSA has additional information available for Contractors who are interested in using EC/EDI on its website, *www.gsa.gov.*

(f) *GSA Advantage!®.* (1) GSA Advantage!® uses electronic commerce to receive catalogs, invoices and text messages; and to send purchase orders, application advice, and functional acknowledgments. GSA Advantage!® enables customers to:

(i) Perform database searches across all contracts by manufacturer; manufacturer's model/part number; Contractor; and generic supply categories.

(ii) Generate EDI delivery orders to Contractors, generate EDI delivery orders from the Federal Supply Service to Contractors, or download files to create their own delivery orders.

(iii) Use the credit card.

(2) GSA Advantage!® may be accessed via the GSA Home Page. The internet address is: *http://www.gsa.gov.*

(End of clause)

552.238–104 Dissemination of Information by Contractor.

As prescribed in 538.273(d)(28), insert the following clause:

Dissemination of Information by Contractor (May 2019)

The Government will provide the Contractor with a single copy of the resulting Federal Supply Schedule contract award documents. However, it is the responsibility of the Contractor to furnish all sales outlets authorized to participate in the performance of the contract with the terms, conditions, pricing schedule, and other appropriate information.

(End of clause)

552.238–105 Deliveries Beyond the Contractual Period—Placing of Orders.

As prescribed in 538.273(d)(29), insert the following clause:

Deliveries Beyond the Contractual Period—Placing of Orders (May 2019)

In accordance with Clause 552.238–78, Scope of Contract (Eligible Ordering Activities), this contract covers all requirements that may be ordered, as distinguished from delivered during the contract term. This is for the purpose of providing continuity of supply or operations by permitting ordering activities to place orders as requirements arise in the normal course of operations. Accordingly, any order mailed (or received, if forwarded by other means than through the mail) to the Contractor on or before the expiration date of the contract, and providing for delivery within the number of days specified in the contract, shall constitute a valid order.

(End of clause)

552.238–106 Interpretation of Contract Requirements.

As prescribed in 538.273(d)(30), insert the following clause:

Interpretation of Contract Requirements (May 2019)

No interpretation of any provision of this contract, including applicable specifications, shall be binding on the Government unless furnished or agreed to in writing by the Contracting Officer or his designated representative.

(End of clause)

552.238–107 Export Traffic Release (Supplies).

As prescribed in 538.273(d)(31), insert the following clause:

Export Traffic Release (Supplies) (May 2019)

Supplies ordered by GSA for export will not be shipped by the Contractor until shipping instructions are received from GSA. To obtain shipping instructions, the Contractor shall forward completed copies of GSA Form 1611, Application for Shipping Instructions and Notice of Availability, to the GSA office designated on the purchase order at least 15 days prior to the anticipated shipping date. Copies of GSA Form 1611 will be furnished to the Contractor with the purchase order. Failure to comply with this requirement could result in nonacceptance of the material by authorities at the port of exportation. When supplies for export are ordered by other Government agencies the Contractor should obtain shipping instructions from the ordering agency.

(End of clause)

552.238–108 Spare Parts Kit.

As prescribed in 538.273(d)(32), insert the following clause:

Spare Parts Kit (May 2019)

(a) The Contractor will be required to offer a spare parts kit conforming, generally, to the following requirements for each item awarded under this solicitation: [The Ordering Activity contracting officer should insert the specifications for a spare parts kit specific to the solicited items.]

(b) The Contractor shall furnish prices for spare parts kits as follows:

(i) Price of kit unpackaged.

(ii) Price of kit in domestic pack.

(iii) Price of kit in wooden case, steel-strapped.

(c) The Contractor will be required to furnish a complete description of spare parts kit offered, a list of parts included, and the price of the kit delivered f.o.b. destination to any point within the conterminous United States within 15 days after receipt of a request from the Ordering Activity Contracting Officer. If the kit offered is acceptable to the Ordering Activity, awards covering requirements will be made by supplemental agreement to this contract.

(End of clause)

552.238–109 Authentication Supplies and Services.

As prescribed in 538.273(d)(33), insert the following clause:

Authentication Supplies and Services (May 2019)

(a) *General background.* (1) The General Services Administration (GSA) established the ''Identity and Access Management Services'' (IAMS) Program to clearly define the kinds of digital certificates and PKI services that meet the requirements for service providers and supplies that support FISMA-compliant IAM systems deployed by Federal agencies.

(2) Homeland Security Presidential Directive 12 (HSPD–12), ''Policy for a Common Identification Standard for Federal Employees and Contractors'' establishes the requirement for a mandatory Government-wide standard for secure and reliable forms of identification issued by the Federal Government to its employees and Contractor employees assigned to Government contracts in order to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy. Further, the

Directive requires the Department of Commerce to promulgate a Federal standard for secure and reliable forms of identification within six months of the date of the Directive. As a result, the National Institute of Standards and Technology (NIST) released Federal Information Processing Standard (FIPS) 201–2: Personal Identity Verification of Federal Employees and Contractors August 2013. FIPS 201–2 requires that the digital certificates incorporated into the Personal Identity Verification (PIV) identity credentials comply with the X.509 Certificate Policy for the U.S. Federal PKI Common Policy Framework. In addition, FIPS 201–2 requires that Federal identity badges referred to as PIV credentials, issued to Federal employees and Contractors comply with the Standard and associated NIST Special Publications 800–73, 800–76, 800–78, and 800–79.

(b) *Special item numbers.* GSA has established the e-Authentication Initiative (see URL: *http://www.idmanagement.gov*) to provide common infrastructure for the authentication of the public and internal Federal users for logical access to Federal e-Government applications and electronic services. To support the government-wide implementation of HSPD–12 and the Federal e-Authentication Initiative, GSA has established Special Item Numbers (SINs) pertaining to Authentication Products and Services, including Electronic Credentials, Digital Certificates, eAuthentication, Identify and Access Management, PKI Shared Service Providers, and HSPD–12 Product and Service Components.

(c) *Qualification information.* (1) All Authentication supplies and services must be qualified as being compliant with Government-wide requirements before they will be included on a GSA Information Technology (IT) Schedule contract. The Qualification Requirements and associated evaluation procedures against the Qualification Requirements for each SIN and the specific Qualification Requirements for HSPD–12 implementation components are presented at the following URL: *http://www.idmanagement.gov.*

(2) In addition, the National Institute of Standards and Technology (NIST) has established the NIST Personal Identity Verification Program (NPIVP) to evaluate integrated circuit chip cards and supplies against conformance requirements contained in FIPS 201. GSA has established the FIPS 201Evaluation Program to evaluate other supplies needed for agency implementation of HSPD–12 requirements where normative requirements are specified in FIPS 201 and to perform card and reader interface testing for interoperability. Products that are approved as FIPS–201 compliant through these evaluation and testing programs may be offered directly through HSPD–12 Supplies and Services Components SIN under the category ''Approved FIPS 201-Compliant Products and services.

(d) *Qualification requirements.* Offerors proposing Authentication supplies and services under the established SINs are required to provide the following:

(1) Proposed items must be determined to be compliant with Federal requirements for that SIN. Qualification Requirements and procedures for the evaluation of supplies and services are posted at the URL: *http://www.idmanagement.gov.* GSA will follow these procedures in qualifying offeror's supplies and services against the Qualification Requirements for applicable to SIN. Offerors must submit all documentation certification letter(s) for Authentication Supplies and Services offerings at the same time as submission of proposal. Award will be dependent upon receipt of official documentation from the Acquisition Program Management Office (APMO) listed below verifying satisfactory qualification against the Qualification Requirements of the proposed SIN(s).

(2) After award, Contractor agrees that certified supplies and services will not be offered under any other SIN on any Federal Supply Schedule

(3)(i) If the Contractor changes the supplies or services previously qualified, GSA may require the Contractor to resubmit the supplies or services for re-qualification.

(ii) If the Federal Government changes the qualification requirements or standards, Contractor must resubmit the supplies and services for re-qualification.

(4) Immediately prior to making an award, Contracting Officers MUST consult the following website to ensure that the supplies and/or services recommended for award under any Authentication Supplies and Services SINs are in compliance with the latest APL qualification standards: *www.idmanagement.gov.* A dated copy of the applicable page should be made and included with the award documents.

(e) *Demonstrating conformance.* (1) The Federal Government has established Qualification Requirements for demonstrating conformance with the Standards. The following websites provide additional information regarding the evaluation and qualification processes:

(i) For Identify and Access Management Services (IAMS) and PKI Shared Service Provider (SSP) Qualification Requirements and evaluation procedures: *http://www.idmanagement.gov;*

(ii) For HSPD–12 Product and Service Components Qualification Requirements and evaluation procedures: *http://www.idmanagement.gov;*

(iii) For FIPS 201 evaluation program testing and certification procedures: *https://www.idmanagement.gov/fips201/.*

(f) *Acquisition Program Management Office (APMO).* GSA has established the APMO to provide centralized technical oversight and management regarding the qualification process to industry partners and Federal agencies. Contact the following APMO for information on the eAuthentication Qualification process. Technical, APMO, FIPS 201, and HSPD–12 Points of Contact can be found below, or in an additional attachment to the solicitation. [The contracting officer should insert the points of contact information below, unless otherwise included elsewhere in the solicitation.]

* ____ *

(End of clause)

552.238–110 Commercial Satellite Communication (COMSATCOM) Services.

As prescribed in 538.273(d)(34) insert the following clause:

Commercial Satellite Communication (COMSATCOM) Services (May 2019)

(a) *General background.* Special Item Numbers (SINs) have been established for Commercial Satellite Communications (COMSATCOM) services, focused on transponded capacity (SIN 132–54) and fixed and mobile subscription services (SIN 132–55), to make available common COMSATCOM services to all Ordering Activities.

(b) *Information assurance.* (1) The Contractor shall demonstrate, to the maximum extent practicable, the ability to meet:

(i) The Committee on National Security Systems Policy (CNSSP) 12, ''National Information Assurance Policy for Space Systems used to Support National Security Missions,'' or

(ii) Department of Defense Directive (DoDD) 8581.1, ''Information Assurance (IA) Policy for Space Systems Used by the Department of Defense.''

(2) The Contractor shall demonstrate the ability to comply with the Federal Information Security Management Act of 2002 as implemented by Federal Information Processing Standards Publication 200 (FIPS 200), ''Minimum Security Requirements for Federal Information and Information Systems.'' In response to ordering activity requirements, at a minimum, all services shall meet the requirements assigned against:

(i) A low-impact information system (per FIPS 200) that is described in the current revision of National Institute of Standards and Technology (NIST) Special Publication (SP) 800–53, ''Recommended Security Controls for Federal Information Systems and Organizations,'' or

(ii) A Mission Assurance Category (MAC) III system that is described in the current revision of DoD Instruction (DoDI) 8500.2, ''Information Assurance Implementation.''

(3) The Contractor's information assurance boundary is where the Contractor's services connect to the user terminals/equipment (*i.e.,* includes satellite command encryption (ground and space); systems used in the Satellite Operations Centers (SOCs), Network Operations Centers (NOCs) and teleport; and terrestrial infrastructure required for service delivery).

(c) *Delivery schedule.* The Contractor shall deliver COMSATCOM services in accordance with 552.238–90.

(d) *Portability.* The Contractor shall have the capability to redeploy COMSATCOM services, subject to availability. Portability shall be provided within the COMSATCOM Contractor's resources at any time as requested by the ordering activity. When portability is exercised, evidence of equivalent net present value (NPV) shall be provided by the Contractor.

(e) *Flexibility/optimization.* The Contractor shall have the capability to re-groom resources for spectral, operational, or price efficiencies. Flexibility/optimization shall be provided within the COMSATCOM

Contractor's resources at any time as requested by the ordering activity. When flexibility/optimization is exercised, evidence of equivalent net present value (NPV) shall be provided by the Contractor. The Contractor is encouraged to submit re-grooming approaches for ordering activity consideration that may increase efficiencies for existing COMSATCOM services.

(f) *Net ready (interoperability).* COMSATCOM services shall be consistent with commercial standards and practices. Services shall have the capability to access and/or interoperate with Government or other Commercial teleports/gateways and provide enterprise service access to or among networks or enclaves. Interfaces may be identified as interoperable on the basis of participation in a sponsored interoperability program.

(g) *Network monitoring (Net OPS).* The Contractor shall have the capability to electronically collect and deliver near real-time monitoring, fault/incident/outage reporting, and information access to ensure effective and efficient operations, performance, and availability, consistent with commercial practices. Consistent with the Contractor's standard management practices, the Net Ops information will be provided on a frequency (example: Every 6 hours, daily) and format (example: SNMP, XML) as defined in a requirement to a location/entity/electronic interface defined by the ordering activity. Specific reporting requirements will be defined by the Ordering Activity.

(h) *EMI/RFI identification, characterization, and geo-location.* The Contractor shall have the capability to collect and electronically report in near real-time Electro Magnetic Interference (EMI)/Radio Frequency Interference (RFI) identification, characterization, and geo-location, including the ability to identify and characterize sub-carrier EMI/RFI being transmitted underneath an authorized carrier, and the ability to geo-locate the source of any and all EMI/RFI. The Contractor shall establish and use with the ordering activity a mutually agreed upon media and voice communications capability capable of protecting ''Sensitive, but Unclassified'' data.

(i) *Security.* (1) The Contractor may be required to obtain/possess varying levels of personnel and facility security clearances up to U.S. Government TOP SECRET/Sensitive Compartmented Information (TS/SCI) or equivalent clearances assigned by the National Security Authority of a NATO Member State or Major Non-NATO Ally.

(2) For incident resolution involving classified matters, the Contractor shall provide appropriately cleared staff who can affect COMSATCOM services operations (example: Satellite payload operations, network operations). The Contractor shall provide a minimum of one operations staff member AND a minimum of one person with the authority to commit the company if resolution requires business impacting decisions (example: Chief Executive Officer, Chief Operations Officer, etc.).

(3) When Communications Security or Transmission Security equipment or keying material is placed in the equipment/terminal shelter, the Contractor shall ensure compliance with applicable physical security directives/guidelines and that all deployed equipment/terminal operations and maintenance personnel shall possess the appropriate clearances, equal to or higher than the classification level of the data being transmitted. Where local regulations require use of foreign personnel for terminal operations and maintenance, then the Contractor shall ensure compliance with applicable security directives/guidelines and document to the U.S. Government's satisfaction that protective measures are in place and such individuals have equivalent clearances granted by the local host nation.

(4) For classified operations security (OPSEC), the Contractor shall ensure that all personnel in direct contact with classified OPSEC indicators (example: The unit, location, and time of operations) have U.S. SECRET or higher personnel security clearances, or, as appropriate, equivalent clearances assigned by the National Security Authority of a NATO Member State or Major Non-NATO Ally, in accordance with applicable security directives and guidelines.

(5) For classified requirements, cleared satellite operator staff must have access to secure voice communications for emergency purposes. Communications security equipment certified by the National Security Agency (NSA) to secure unclassified and up to and including SECRET communication transmissions at all operations centers is preferred. If a Contractor is unable to have access to NSA-approved communications security equipment at its operations centers, then a combination of a ''Sensitive but Unclassified'' (SBU) cryptographic module approved by the U.S. National Institute for Standards and Technology and pre-arranged access to National Security Agency-approved communications security equipment at an agreed alternate facility is acceptable.

(6) The Contractor shall have the capability to ''mask'' or ''protect'' users against unauthorized release of identifying information to any entity that could compromise operations security. Identifying information includes but is not limited to personal user and/or unit information including tail numbers, unit names, unit numbers, individual names, individual contact numbers, street addresses, etc.

(j) *Third party billing for COMSATCOM subscription services.* The Contractor shall identify authorized network infrastructure for the ordering activity. In some cases, the user of the terminal may access network infrastructure owned or operated by a third party. In the event a terminal is used on a third party's network infrastructure, the Contractor shall provide to the ordering activity, invoices and documentation reflecting actual usage amount and third party charges incurred. The ordering activity shall be billed the actual third party charges incurred, or the contract third party billing price, whichever is less.

(End of clause)

552.238–111 Environmental Protection Agency Registration Requirement.

As prescribed in 538.273(d)(35), insert the following clause:

Environmental Protection Agency Registration Requirement (May 2019)

(a) With respect to the products described in this solicitation which require registration with the Environmental Protection Agency (EPA), as required by the Federal Insecticide, Fungicide, and Rodenticide Act, Section 3, Registration of Pesticides, awards will be made only for such products that have been assigned an EPA registration number, prior to the time of bid opening.

(b) The offeror shall insert in the spaces provided in this section, the manufacturer's and/or distributor's name and the ''EPA Registration Number'' for each item offered. Any offer which does not specify a current ''EPA Registration Number'' in effect for the duration of the contract period, and including the manufacturer's and/or distributor's name will be rejected.

Items			
Item numbers	Name of manufacturer/distributor	EPA registration number	Date of expiration

(c) If, during the performance of a contract awarded as a result of this solicitation, the EPA Registration Number for products being furnished is terminated, withdrawn, canceled, or suspended, and such action does not arise out of causes beyond the control, and with the fault or negligence of the Contractor or subcontractor, the Government may terminate the contract pursuant to either the Default Clause or Termination for Cause Paragraph (contained in the clause 52.212–4, Contract Terms and Conditions—Commercial Items), whichever is applicable to the resultant contract.

(End of clause)

552.238–112 Definition (Federal Supply Schedules)—Non-Federal Entity.

As prescribed in 538.7004(a), insert the following clause:

Definition (Federal Supply Schedules)—Non-Federal Entity (May 2019)

Ordering activity (also called ''ordering agency'' and ''ordering office'') means an eligible ordering activity (see 552.238–113), authorized to place orders under Federal Supply Schedule contracts.

(End of clause)

552.238–113 Scope of Contract (Eligible Ordering Activities).

As prescribed in 538.7004 (b) insert the following clause:

Scope of Contract (Eligible Ordering Activities) (May 2019)

(a) This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named below, as a source of supply for the supplies or services described herein, for domestic and/or overseas delivery. For Special Item Number 132–53, Wireless Services ONLY, limited geographic coverage (consistent with the Offeror's commercial practice) may be proposed.

(1) Executive agencies (as defined in FAR Subpart 2.1) including nonappropriated fund activities as prescribed in 41 CFR 101–26.000;

(2) Government contractors authorized in writing by a Federal agency pursuant to FAR 51.1;

(3) Mixed ownership Government corporations (as defined in the Government Corporation Control Act);

(4) Federal Agencies, including establishments in the legislative or judicial branch of government (except the Senate, the House of Representatives and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).

(5) The District of Columbia;

(6) Tribal governments when authorized under 25 U.S.C. 450j(k);

(7) Tribes or tribally designated housing entities pursuant to 25 U.S.C. 4111(j);

(8) Qualified Nonprofit Agencies as authorized under 40 U.S.C. 502(b); and

(9) Organizations, other than those identified in paragraph (d) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(b) *Definitions.*

Domestic delivery is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

Overseas delivery is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. territories.

(c) Offerors are requested to check one of the following boxes:

☐ Contractor will provide domestic and overseas delivery.

☐ Contractor will provide overseas delivery only.

☐ Contractor will provide domestic delivery only.

(d) The following activities may place orders against Schedule contracts:

(1) State and local government may place orders against Schedule 70 contracts, and Consolidated Schedule contracts containing information technology Special Item Numbers, and Schedule 84 contracts, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities;

(2) The American National Red Cross may place orders against Federal Supply Schedules for products and services in furtherance of the purposes set forth in its Federal charter (36 U.S.C. 300102); PROVIDED, the Contractor accepts order(s) from the American National Red Cross; and

(3) Other qualified organizations, as defined in section 309 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5152), may place orders against Federal Supply Schedules for products and services determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency; PROVIDED, the Contractor accepts order(s) from such activities.

(4) State and local governments may place orders against Federal Supply Schedules for good or services determined by the Secretary of Homeland Security to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) to facilitate disaster preparedness or response, or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack; PROVIDED, the Contractor accepts order(s) from such activities.

(e) Articles or services may be ordered from time to time in such quantities as may be needed to fill any requirement, subject to the Order Limitations thresholds which will be specified in resultant contracts. Overseas activities may place orders directly with schedule contractors for delivery to CONUS port or consolidation point.

(f)(1) The Contractor is obligated to accept orders received from activities within the Executive branch of the Federal Government.

(2) The Contractor is not obligated to accept orders received from activities outside the Executive branch; however, the Contractor is encouraged to accept such orders. If the Contractor elects to accept such orders, all provisions of the contract shall apply, including clause 52.232–36 Payment by Third Party. If the Contractor is unwilling to accept such orders, and the proposed method of payment is not through the Credit Card, the Contractor shall return the order by mail or other means of delivery within 5 workdays from receipt. If the Contractor is unwilling to accept such orders, and the proposed method of payment is through the Credit Card, the Contractor must so advise the ordering activity within 24 hours of receipt of order. (Reference clause 52.232–36 Payment by Third Party.) Failure to return an order or advise the ordering activity within the time frames of this paragraph shall constitute acceptance whereupon all provisions of the contract shall apply.

(g) The Government is obligated to purchase under each resultant contract a guaranteed minimum of $2,500 (two thousand, five hundred dollars) during the contract term.

(h) All users of GSA's Federal Supply Schedules, including non-Federal users, shall use the schedules in accordance with the ordering guidance provided by the Administrator of General Services. GSA encourages non-Federal users to follow the Schedule Ordering Procedures set forth in the Federal Acquisition Regulation (FAR) 8.4, but they may use different established competitive ordering procedures if such procedures are needed to satisfy their state and local acquisition regulations and/or organizational policies.

(End of clause)

552.238–114 Use of Federal Supply Schedule Contracts by Non-Federal Entities.

As prescribed in 538.7004(c), insert the following clause:

Use of Federal Supply Schedule Contracts by Non-Federal Entities (May 2019)

(a) If an entity identified in paragraph (d) of the clause at 552.238–113, Scope of Contract (Eligible Ordering Activities), elects to place an order under this contract, the entity agrees that the order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Item Contract Terms and Conditions that specifies ''Compliance with laws unique to Government contracts'' (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, parties to this new contract are encouraged to resolve disputes through Alternative Dispute Resolution. Likewise, a Blanket Purchase Agreement (BPA), although not a contract, is an agreement that may be entered into by the Contractor with such an entity and the Federal Government is not a party.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA, that shall mean the individual responsible for placing the order for the ordering activity (*e.g.,* FAR 52.212–4 at paragraph (f) and FSS clause I–FSS–249 B.)

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation, order, or as otherwise allowed by State and local government entities as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (d) of the clause at 552.238–113, Scope of Contract (Eligible Ordering Activities), the Contractor agrees to the following conditions:

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall decline the order using the same means as those used to place the order. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(c) In accordance with clause 552.238–80, Industrial Funding Fee and Sales Reporting, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the Contractor must report two dollar values for each Special Item Number:

(1) The dollar value for sales to entities identified in paragraph (a) of the clause at 552.238–113, Scope of Contract (Eligible Ordering Activities), and

(2) The dollar value for sales to entities identified in paragraph (d) of clause 552.238–113 Scope of Contract (Eligible Ordering Activities).

(End of clause)

552.238–115 Special Ordering Procedures for the Acquisition of Order-Level Materials.

As prescribed in 538.7204(b), insert the following clause:

Special Ordering Procedures for the Acquisition of Order-Level Materials (May 2019)

(a) *Definition.*

Order-level materials means supplies and/or services acquired in direct support of an individual task or delivery order placed against a Federal Supply Schedule (FSS) contract or FSS blanket purchase agreement (BPA), when the supplies and/or services are not known at the time of Schedule contract or FSS BPA award. The prices of order-level materials are not established in the FSS contract or FSS BPA. Order-level materials acquired following the procedures in paragraph (d) of this section are done so under the authority of the FSS program, pursuant to 41 U.S.C. 152(3), and are not open market items, which are discussed in FAR 8.402(f).

(b) FAR 8.403(b) provides that GSA may establish special ordering procedures for a particular FSS.

(c) The procedures in FAR subpart 8.4 apply to this contract, with the exceptions listed in this clause. If a requirement in this clause is inconsistent with FAR subpart 8.4, this clause takes precedence pursuant to FAR 8.403(b).

(d) Procedures for including order-level materials when placing an individual task or delivery order against an FSS contract or FSS BPA.

(1) The procedures discussed in FAR 8.402(f) do not apply when placing task and delivery orders that include order-level materials.

(2) Order-level materials are included in the definition of the term ''material'' in FAR clause 52.212–4 Alternate I, and therefore all provisions of FAR clause 52.212–4 Alternate I that apply to ''materials'' also apply to order-level materials. The ordering activity shall follow procedures under the Federal Travel Regulation and FAR Part 31 when order-level materials include travel.

(3) Order-level materials shall only be acquired in direct support of an individual task or delivery order and not as the primary basis or purpose of the order.

(4) The value of order-level materials in a task or delivery order, or the cumulative value of order-level materials in orders against an FSS BPA awarded under a FSS contract shall not exceed 33.33%.

(5) All order-level materials shall be placed under the Order-Level Materials SIN.

(6) Prior to the placement of an order that includes order-level materials, the Ordering Activity shall follow procedures in FAR 8.404(h).

(7) To support the price reasonableness of order-level materials—

(i) The contractor proposing order-level materials as part of a solution shall obtain a minimum of three quotes for each order-level material above the simplified acquisition threshold.

(A) One of these three quotes may include materials furnished by the contractor under FAR 52.212–4 Alt I (i)(1)(ii)(A).

(B) If the contractor cannot obtain three quotes, the contractor shall maintain its documentation of why three quotes could not be obtained to support their determination.

(C) A contractor with an approved purchasing system per FAR 44.3 shall instead follow its purchasing system requirement and is exempt from the requirements in paragraphs (d)(7)(i)(A)–(B) of this clause.

(ii) The Ordering Activity Contracting Officer must make a determination that prices for all order-level materials are fair and reasonable. The Ordering Activity Contracting Officer may base this determination on a comparison of the quotes received in response to the task or delivery order solicitation or other relevant pricing information available.

(iii) If indirect costs are approved per FAR 52.212–4(i)(1)(ii)(D)(2) Alternate I), the Ordering Activity Contracting Officer must make a determination that all indirect costs approved for payment are fair and reasonable. Supporting data shall be submitted in a form acceptable to the Ordering Activity Contracting Officer.

(8) Prior to an increase in the ceiling price of order-level materials, the Ordering Activity Contracting Officer shall follow the procedures at FAR 8.404(h)(3)(iv).

(9) In accordance with GSAR clause 552.238–83, Examination of Records by GSA, GSA has the authority to examine the Contractor's records for compliance with the pricing provisions in FAR clause 52.212–4 Alternate I, to include examination of any books, documents, papers, and records involving transactions related to the contract for overbillings, billing errors, and compliance with the IFF and the Sales Reporting clauses of the contract.

(10) OLMs are exempt from the following clauses:

(i) 552.216–70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.

(ii) 552.238–77 Submission and Distribution of Authorized FSS Schedule Pricelists.

(iii) 552.238–81 Price Reductions.

(11) *Exceptions for travel.* (i) Travel costs are governed by FAR 31.205–46 and therefore the requirements in paragraph (d)(7) do not apply to travel costs.

(ii) Travel costs do not count towards the 33.33% limitation described in paragraph (d)(4) of this section.

(iii) Travel costs are exempt from clause 552.238–80 Industrial Funding Fee and Sales Reporting.

(End of clause)

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